

# **EXHIBIT B**

## **PART I**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. :

SECURITIES LITIGATION :

X

The Expert Discovery Deposition of  
CHRISTIANA OCHOA, taken in the above-entitled case  
before KATHLEEN J. PACULT, a Certified Shorthand  
Reporter within and for the County of Cook, State of  
Illinois, taken pursuant to the provisions of the  
Federal Rules of Civil Procedure and the Rules of  
the Supreme Court thereof pertaining to the taking  
of depositions for the purpose of discovery, taken  
on the 4th day of August 2006, at the hour of  
9:30 a.m., at 6100 North River Road, Rosemont,  
Illinois.

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## 1 APPEARANCES

2  
3 BERGER & MONTAGUE, P.C.  
4 BY: TODD COLLINS, ESQ.  
5 1622 Locust Street  
6 Philadelphia, Pennsylvania 19103  
7 (215) 875-3000  
8 tcollins@bm.net

9 -and-

10 LAW OFFICES OF DONALD B. LEWIS  
11 BY: MR. DONALD B. LEWIS  
12 5 Cynwyd Road  
13 Bala Cynwyd, Pennsylvania 19004  
14 (610) 668-0331  
15 morrislewislaw@aol.com  
16 appeared on behalf of the Plaintiff;

17 AKIN GUMP STRAUSS HAUER & FELD, LLP  
18 BY: MR. PAUL R. BESSETTE  
19 300 West 6th Street  
20 Suite 2100  
21 Austin, Texas 78701-3911  
22 (512) 499-6200  
23 pbessette@akingump.com

24 appeared on behalf of the Defendant;

17 SIMPSON THACHER & BARTLETT, LLP  
18 BY: MR. PAUL C. GLUCKOW  
19 425 Lexington Avenue  
20 New York, New York 10017-3954  
21 (212) 455-2653  
22 pgluckow@stblaw.com

23 appeared on behalf of the Underwriter  
24 Defendants.

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1 (Exhibit Nos. 303 - 305  
2 were marked for  
3 identification.)  
4 (Witness duly sworn.) 09:35:27

## 5 CHRISTIANA OCHOA

6 called as a witness herein, having been first duly  
7 sworn on oath, was examined and testified as  
8 follows:

## 9 EXAMINATION

10 BY MR. BESSETTE:

11 Q. Would you please state your full name 09:35:28  
12 and spell your last name for the record, please. 09:35:30

13 A. My name is Christiana Ochoa. My last 09:35:32  
14 name is spelled O-c-h-o-a. 09:35:36

15 Q. Good morning, Ms. Ochoa. My name is 09:35:37  
16 Paul Bessette, I am with the law firm of Akin, Gump, 09:35:40  
17 Strauss, Hauer & Feld, and I represent the Adams 09:35:42  
18 Golf defendants in this case. Thanks for being here 09:35:44  
19 today. In light of your family situation, we 09:35:47  
20 appreciate the time you are taking. 09:35:50

21 A. No problem. 09:35:52

22 MR. COLLINS: If you would, Professor 09:35:52  
23 Ochoa. 09:35:55

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1 BY MR. BESSETTE: 09:35:55

2 Q. Oh, very good. Professor Ochoa. Is 09:35:56  
3 that what you prefer me to call you? 09:35:58

4 A. Yes, thanks. 09:36:01

5 Q. Okay. Now, when were you first 09:36:02  
6 contacted about providing testimony in this case? 09:36:04

7 A. I was contacted in the summer of '05. 09:36:07

8 Q. By whom? 09:36:11

9 A. By Neil Mara. 09:36:12

10 Q. Okay. And did you know Mr. Mara 09:36:13  
11 before him contacting you? 09:36:16

12 A. No. 09:36:18

13 Q. What did he say to you? 09:36:19

14 A. He asked me whether I would be 09:36:20

15 interested in consulting on this matter, and we 09:36:23

16 talked about -- actually, I believe the first time 09:36:26

17 he contacted me he left a voicemail, and then I 09:36:27

18 called him back. I think I was out of town and I 09:36:31

19 called him back when I got the voicemail. We then 09:36:32

20 spoke, and he told me a little bit about the matter 09:36:34

21 and the kind of help that Todd Collins and Neil Mara 09:36:38

22 were looking for in this case. 09:36:42

23 Q. Did you ask him how he got your name? 09:36:43

24 A. I did ask him how he got my name. 09:36:47

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1 Though I'm not sure if it was in my conversation 09:36:49  
2 with Neil Mara, or whether it was into when I spoke 09:36:51  
3 with Mr. Collins, whether I asked that specific 09:36:55  
4 question. But I did ask that of either Neil Mara or 09:36:58  
5 Todd Collins. 09:37:00

6 Q. And what did they tell you? 09:37:00

7 A. They told me that they had found my 09:37:01  
8 syllabus from my international business transactions 09:37:05  
9 class on the internet. Saw that I teach a section 09:37:08

10 on gray marketing, and that it specifically relates 09:37:12  
11 to gray marketing in golf equipment products and 09:37:14  
12 were interested as a result. 09:37:16

13 Q. Now, I apologize. I kind of jumped 09:37:18  
14 into that. 09:37:18

15 Have you had your deposition taken 09:37:19  
16 before? 09:37:20

17 A. No. 09:37:20

18 Q. Okay. Then I apologize a second time. 09:37:21  
19 Let me just explain some of the basics. 09:37:24

20 You have been put under oath, you 09:37:26  
21 understand that? 09:37:28

22 A. Yes. 09:37:29

23 Q. Okay. I am going to ask you a series 09:37:29  
24 of questions, and I will do my best to not talk over 09:37:32

2 (Pages 2 to 5)

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<p>1 you. And if you could do the same, then the court 09:37:35</p> <p>2 reporter will have a clean record for us to review, 09:37:39</p> <p>3 okay? 09:37:42</p> <p>4 A. Understood. 09:37:42</p> <p>5 Q. Please answer in words or phrases, 09:37:43</p> <p>6 because the court reporter can't take down the 09:37:45</p> <p>7 uh-huhs and the nods of the head, so we want to make 09:37:48</p> <p>8 sure we have a clean record. 09:37:50</p> <p>9 A. All right. 09:37:50</p> <p>10 Q. All right. If you don't understand 09:37:51</p> <p>11 any of my questions, if they are not clear, then 09:37:52</p> <p>12 please let me know and I will do my best to reask or 09:37:55</p> <p>13 rephrase the question. Understood? 09:37:58</p> <p>14 A. Thank you. 09:37:59</p> <p>15 Q. Okay. If you need a break at any 09:38:00</p> <p>16 time, as we talked off the record, just please let 09:38:03</p> <p>17 me know and we will endeavor to meet whatever 09:38:04</p> <p>18 schedule you need for your family. 09:38:07</p> <p>19 A. Great. Thanks. 09:38:08</p> <p>20 Q. Any questions about the deposition 09:38:09</p> <p>21 process? 09:38:11</p> <p>22 A. Not right now. 09:38:11</p> <p>23 Q. Is there any reason why you can't give 09:38:12</p> <p>24 your best testimony today? 09:38:15</p>	<p>1 summer. It trailed off in the early fall and didn't 09:39:10</p> <p>2 pick up again until this past summer. The question 09:39:14</p> <p>3 of whether I was going to commit to helping them was 09:39:20</p> <p>4 still somewhat open until I spoke with them this 09:39:24</p> <p>5 summer. 09:39:27</p> <p>6 BY MR. BESSETTE: 09:39:27</p> <p>7 Q. And let me stop you there. What was 09:39:27</p> <p>8 the reason the question was open for that whole year 09:39:29</p> <p>9 of time or so? 09:39:32</p> <p>10 A. I don't know exactly. We had spoken 09:39:33</p> <p>11 initially and my impression was that the case had 09:39:36</p> <p>12 slowed down, there were delays, and my help was not 09:39:40</p> <p>13 necessary, was not pertinently necessary last year 09:39:44</p> <p>14 as it became this summer. 09:39:50</p> <p>15 Q. So as of last year, did you provide 09:39:52</p> <p>16 them materials about your course of instruction or 09:39:55</p> <p>17 any other materials about your background? 09:39:57</p> <p>18 A. No, I don't believe so. 09:40:00</p> <p>19 Q. How many conversations did you have 09:40:01</p> <p>20 with anyone on the plaintiff's side, whether 09:40:03</p> <p>21 Mr. Collins or Mr. Mara before things, as you say, 09:40:06</p> <p>22 trailed off? 09:40:10</p> <p>23 A. I think three. 09:40:10</p> <p>24 Q. Any of those in person? 09:40:11</p>
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<p>1 A. No. 09:38:16</p> <p>2 Q. Explain to me your thought process in 09:38:16</p> <p>3 deciding to become -- well, strike that. 09:38:25</p> <p>4 Explain to me your thought process 09:38:28</p> <p>5 in deciding whether to cooperate and give testimony 09:38:30</p> <p>6 as an expert in this case. 09:38:34</p> <p>7 MR. COLLINS: Overbroad. 09:38:35</p> <p>8 Go ahead. 09:38:37</p> <p>9 BY THE WITNESS: 09:38:38</p> <p>10 A. If you could be a little bit more 09:38:38</p> <p>11 specific that would be helpful. 09:38:39</p> <p>12 BY MR. BESSETTE: 09:38:41</p> <p>13 Q. Okay. You said you got a phone call 09:38:41</p> <p>14 from Mr. Mara, a message, you called him back. You 09:38:43</p> <p>15 mentioned how they got to know you and what kind of 09:38:46</p> <p>16 help they might need. From that point, tell me what 09:38:49</p> <p>17 your thought process was from then until you decided 09:38:53</p> <p>18 to go ahead and provide help to the plaintiffs in 09:38:56</p> <p>19 this case. 09:38:56</p> <p>20 MR. COLLINS: Same objection. 09:38:58</p> <p>21 Go ahead. 09:38:59</p> <p>22 BY THE WITNESS: 09:39:00</p> <p>23 A. The process was quite long. I had 09:39:01</p> <p>24 contact with Todd Collins and with Neil Mara last 09:39:03</p>	<p>1 A. No. 09:40:12</p> <p>2 Q. And what level of knowledge did you 09:40:13</p> <p>3 have about the case or about the issues after those 09:40:15</p> <p>4 three conversations, do you remember? 09:40:18</p> <p>5 A. I can tell you what I remember. I 09:40:19</p> <p>6 remember that I looked at -- I think I looked up the 09:40:21</p> <p>7 rulings in the case and learned about the case in 09:40:27</p> <p>8 that way. I may have seen the consolidated amended 09:40:30</p> <p>9 complaint at that point as well. And that was it. 09:40:35</p> <p>10 Q. And then you say they re-contacted you 09:40:37</p> <p>11 this summer of 2006? 09:40:42</p> <p>12 A. Yes. 09:40:44</p> <p>13 Q. Who contacted you in particular? 09:40:44</p> <p>14 A. Todd Collins. 09:40:46</p> <p>15 Q. And tell me what he said at that 09:40:47</p> <p>16 point? 09:40:50</p> <p>17 A. He asked me whether I continued to be 09:40:50</p> <p>18 interested in assisting them in this matter, and 09:40:53</p> <p>19 that was the first call. I told him that I was. He 09:40:58</p> <p>20 told me, more or less, the schedule. Given that it 09:41:01</p> <p>21 was going to be a relatively compressed schedule, he 09:41:04</p> <p>22 wanted to make sure that I could accommodate the 09:41:08</p> <p>23 schedule. And that was I think the majority of the 09:41:11</p> <p>24 substance of our first conversation. We then had 09:41:13</p>

3 (Pages 6 to 9)

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<p>1 other conversations after that. 09:41:16</p> <p>2 Q. In any of those -- well, strike that. 09:41:17</p> <p>3 When Mr. Collins re-contacted you 09:41:25</p> <p>4 in the summer of this year and you were entertaining 09:41:28</p> <p>5 the thought of becoming an expert for the plaintiffs 09:41:31</p> <p>6 in this case, did you have to seek permission or 09:41:34</p> <p>7 consult with anybody at the university about whether 09:41:38</p> <p>8 you could do that or not? 09:41:41</p> <p>9 A. I don't think I actually had to seek 09:41:41</p> <p>10 permission, but I did check to see whether I had to 09:41:44</p> <p>11 seek permission. I spoke with my -- with the 09:41:44</p> <p>12 associate dean at my law school. The dean at my law 09:41:44</p> <p>13 school was out of town and he made clear to me that 09:41:49</p> <p>14 it wasn't necessary to speak with her as well. I 09:41:50</p> <p>15 asked him what the issues -- what the constraints 09:41:53</p> <p>16 were on my serving as an expert, and he gave me 09:41:57</p> <p>17 those constraints. 09:42:00</p> <p>18 Q. Now, you had not served as an expert 09:42:02</p> <p>19 witness in any sort of litigation prior to this 09:42:05</p> <p>20 engagement, is that right? 09:42:09</p> <p>21 A. That's correct. 09:42:09</p> <p>22 Q. Were you concerned during the process 09:42:10</p> <p>23 of talking with Mr. Mara or Mr. Collins about 09:42:11</p> <p>24 whether you would qualify as an expert witness? 09:42:14</p>	<p>1 MR. COLLINS: Foundation. 09:43:07</p> <p>2 Go ahead. 09:43:08</p> <p>3 BY THE WITNESS: 09:43:25</p> <p>4 A. I have -- my sister-in-law is -- has 09:43:26</p> <p>5 some experience in litigation, complex litigation. 09:43:29</p> <p>6 And I spoke with her about my qualifications -- I 09:43:31</p> <p>7 spoke with my sister-in-law who has some litigation 09:43:31</p> <p>8 experience about her knowledge of expert witnesses 09:43:32</p> <p>9 and the kinds of qualifications they have and need 09:43:36</p> <p>10 to have, and my qualifications relative to this 09:43:40</p> <p>11 case. 09:43:43</p> <p>12 BY MR. BESSETTE: 09:43:43</p> <p>13 Q. What is your sister-in-law's 09:43:43</p> <p>14 experience in litigation? 09:43:46</p> <p>15 A. She was a litigator at I believe at 09:43:46</p> <p>16 Cooley Godward in Palo Alto and was a litigator 09:43:49</p> <p>17 there. 09:43:56</p> <p>18 Q. Is she a litigator now? 09:43:56</p> <p>19 A. She is not. She transferred to a 09:43:58</p> <p>20 different firm and that does -- she sort of retooled 09:44:03</p> <p>21 herself and now she does trust and estates. 09:44:04</p> <p>22 Q. Okay. What is her name? 09:44:04</p> <p>23 A. Her name is Julie Lanz. 09:44:05</p> <p>24 Q. What were -- what do you understand 09:44:06</p>
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<p>1 A. I wanted to make sure that the 09:42:17</p> <p>2 qualifications that I do possess were adequate and 09:42:19</p> <p>3 sufficient for their needs. 09:42:21</p> <p>4 Q. How did you do that? 09:42:23</p> <p>5 A. I made sure that they were entirely 09:42:24</p> <p>6 aware of the entirety of my knowledge of the gray 09:42:27</p> <p>7 market, my expertise in the gray market, and my 09:42:31</p> <p>8 expertise in other matters as well, and let them 09:42:34</p> <p>9 make their decision about that. 09:42:37</p> <p>10 Q. Did you express concern to the 09:42:39</p> <p>11 assistant dean or anybody at the university when you 09:42:44</p> <p>12 were inquiring about the constraints about whether 09:42:47</p> <p>13 or not you qualified as an expert? 09:42:49</p> <p>14 MR. COLLINS: Foundation. 09:42:52</p> <p>15 You may answer. 09:42:52</p> <p>16 BY THE WITNESS: 09:42:53</p> <p>17 A. No. 09:42:54</p> <p>18 BY MR. BESSETTE: 09:42:54</p> <p>19 Q. Did you consult with anybody -- other 09:42:54</p> <p>20 than the plaintiffs in this case, Mr. Collins or Mr. 09:42:57</p> <p>21 Mara, about whether -- well, did you express to 09:42:59</p> <p>22 anybody, other than Mr. Collins or Mr. Mara, 09:43:01</p> <p>23 thoughts about whether you qualified as an expert in 09:43:04</p> <p>24 this case? 09:43:07</p>	<p>1 you were asked to opine on or to be an expert on in 09:44:13</p> <p>2 this case? 09:44:16</p> <p>3 A. Characteristics of the gray market and 09:44:17</p> <p>4 specifically how they applied to Adams Golf. 09:44:21</p> <p>5 Q. Anything more specific or is that what 09:44:24</p> <p>6 you understood your assignment was? 09:44:26</p> <p>7 A. That was essentially my assignment. 09:44:28</p> <p>8 Q. Okay. Now, let me ask you to -- well, 09:44:30</p> <p>9 actually, let me give you all of these. The court 09:44:34</p> <p>10 reporter has marked these exhibits as 303, 304 and 09:44:37</p> <p>11 305, and I believe they are your expert report in 09:44:44</p> <p>12 the case, your rebuttal expert report, and then the 09:44:48</p> <p>13 expert report of Mr. Gary Frazier in order. 09:44:51</p> <p>14 Does that look to be the case? 09:44:57</p> <p>15 A. Yes. 09:44:58</p> <p>16 Q. And I know you are familiar with your 09:44:58</p> <p>17 expert reports. Are you familiar with Exhibit, I 09:45:01</p> <p>18 guess, 305, which is Mr. Frazier's? 09:45:06</p> <p>19 A. Yes. 09:45:08</p> <p>20 Q. Okay. Turning to -- whether it's page 09:45:09</p> <p>21 1 of Exhibit 303, your report, or Exhibit A, your 09:45:45</p> <p>22 resume, whichever you would like, but I want to ask 09:45:51</p> <p>23 some questions about your qualifications, background 09:45:55</p> <p>24 and experience. 09:45:57</p>

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<p>1 You are currently an associate 09:45:59</p> <p>2 professor of law at Indiana University School of 09:46:00</p> <p>3 Law? 09:46:04</p> <p>4 A. That's correct. 09:46:04</p> <p>5 Q. And as I understand it, you say in the 09:46:05</p> <p>6 report or in your resume that your duties are 09:46:07</p> <p>7 divided into three sort of buckets or categories? 09:46:10</p> <p>8 A. Yes. 09:46:13</p> <p>9 Q. Okay. Would you tell me what those 09:46:13</p> <p>10 are, please? 09:46:15</p> <p>11 A. Those are teaching, research and 09:46:15</p> <p>12 service. 09:46:17</p> <p>13 Q. Okay. What are your primary duties 09:46:17</p> <p>14 with respect to the research prong of your duties? 09:46:21</p> <p>15 A. To research and publish my work. 09:46:23</p> <p>16 Q. And what work? 09:46:33</p> <p>17 A. I guess I am curious about what you 09:46:34</p> <p>18 mean by what work. 09:46:42</p> <p>19 Q. I just want to understand what you 09:46:42</p> <p>20 meant, research and publish your work. 09:46:44</p> <p>21 A. Yeah. It is law professors typically 09:46:44</p> <p>22 write legal scholarship articles, they are published 09:46:47</p> <p>23 in various law journals, as well as other locations. 09:46:51</p> <p>24 And we are expected to produce in that way. 09:46:55</p>	<p>1 of that course with that section in it was on the 09:48:06</p> <p>2 internet and that's how the plaintiff's lawyers 09:48:08</p> <p>3 found you? 09:48:10</p> <p>4 A. That's what I understand. 09:48:11</p> <p>5 Q. Okay. Now, explain to me, this course 09:48:12</p> <p>6 that you teach, international business transactions, 09:48:13</p> <p>7 is that a course for one semester? 09:48:17</p> <p>8 A. Yes. 09:48:20</p> <p>9 Q. And this is at the law school? 09:48:20</p> <p>10 A. Correct. 09:48:23</p> <p>11 Q. Which level of student? 09:48:23</p> <p>12 A. Upper level students. 09:48:26</p> <p>13 Q. So second and third years? 09:48:28</p> <p>14 A. Correct. And also graduate students. 09:48:30</p> <p>15 Q. What are the -- I mean, is there a 09:48:33</p> <p>16 textbook or multiple textbooks that you use to teach 09:48:40</p> <p>17 that class? 09:48:43</p> <p>18 A. I teach from one textbook. 09:48:44</p> <p>19 Q. Which one is that? 09:48:49</p> <p>20 A. It's Folsom, Gordon and Spanogle 09:48:50</p> <p>21 International Business Transaction. Folsom is 09:48:59</p> <p>22 F-o-l-s-o-m, Gordon is Gordon, and Spanogle I 09:48:59</p> <p>23 believe is S-p-a-n-g -- S-p-a-n-o-g-l-e. 09:49:17</p> <p>24 Q. And is there one or more chapters in 09:49:17</p>
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<p>1 Q. How many articles have you published? 09:46:57</p> <p>2 A. I don't remember right now. It is on 09:47:01</p> <p>3 my resume. It is five and a book review. 09:47:05</p> <p>4 Q. Now, in the teaching category, if I 09:47:10</p> <p>5 understand this right, you teach international 09:47:20</p> <p>6 business transactions as one of the courses? 09:47:24</p> <p>7 A. Yes. 09:47:26</p> <p>8 Q. I guess there is five courses, is that 09:47:26</p> <p>9 right? 09:47:30</p> <p>10 A. That's correct. 09:47:30</p> <p>11 Q. And international business 09:47:30</p> <p>12 transactions, in that course, I understand there is 09:47:35</p> <p>13 a section devoted to counterfeits and gray market 09:47:38</p> <p>14 activity, including in the golf industry? 09:47:42</p> <p>15 A. Correct, yes. 09:47:45</p> <p>16 (Off the record 09:47:45</p> <p>17 discussion.) 09:47:45</p> <p>18 BY MR. BESSETTE: 09:47:48</p> <p>19 Q. International business transactions 09:47:48</p> <p>20 has a section devoted to counterfeits and gray 09:47:55</p> <p>21 marketing including in the golf industry, is that 09:47:59</p> <p>22 right? 09:48:03</p> <p>23 A. That's correct. 09:48:03</p> <p>24 Q. And you understand that that syllabus 09:48:03</p>	<p>1 that textbook that deals with gray marketing? 09:49:26</p> <p>2 A. There is one chapter that deals with 09:49:29</p> <p>3 counterfeiting and gray marketing. Let me rephrase. 09:49:33</p> <p>4 There are chapters in the book, the chapters are 09:49:36</p> <p>5 divided into what the authors call problems or 09:49:39</p> <p>6 sections, and one of those is devoted to gray 09:49:41</p> <p>7 marketing and counterfeiting. 09:49:45</p> <p>8 Q. Okay. And how extensive is that 09:49:47</p> <p>9 section or chapter? In other words, how many pages? 09:49:50</p> <p>10 MR. COLLINS: The document speaks for 09:49:51</p> <p>11 itself, and as you know, was produced. 09:49:53</p> <p>12 BY THE WITNESS: 09:49:56</p> <p>13 A. I don't remember exactly the page 09:49:57</p> <p>14 length. 09:49:58</p> <p>15 BY MR. BESSETTE: 09:49:59</p> <p>16 Q. Did you select that course book for 09:49:59</p> <p>17 that class? 09:50:01</p> <p>18 A. I did. 09:50:01</p> <p>19 Q. How did you select that? What was 09:50:02</p> <p>20 your criteria? 09:50:04</p> <p>21 A. I used a few criteria. I selected 09:50:05</p> <p>22 it -- I taught international business transactions 09:50:09</p> <p>23 the first year that I taught at the law school, and 09:50:12</p> <p>24 went through a process that a new professor 09:50:16</p>

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<p>1 typically goes through in selecting a course book 09:50:20</p> <p>2 and choosing that one. 09:50:23</p> <p>3 Q. Okay. And would you just explain for 09:50:25</p> <p>4 the jury what that process is? 09:50:26</p> <p>5 A. Sure. That process includes reviewing 09:50:27</p> <p>6 the world of possible international business 09:50:30</p> <p>7 transactions textbooks, looking at them seeing which 09:50:34</p> <p>8 ones has materials that you think are presented 09:50:39</p> <p>9 clearly, neatly, in a way that is well organized, 09:50:41</p> <p>10 easy to understand and will capture the students' 09:50:44</p> <p>11 attention. 09:50:44</p> <p>12 In addition, I spoke with other 09:50:51</p> <p>13 professors who I knew had taught in the area before 09:50:53</p> <p>14 and asked them about their experiences in teaching 09:50:55</p> <p>15 international business transactions and the 09:50:59</p> <p>16 textbooks that they had used and the problems and 09:51:01</p> <p>17 the benefits that they had encountered with each of 09:51:02</p> <p>18 them. 09:51:07</p> <p>19 Q. Now, only one section in that course 09:51:08</p> <p>20 book is devoted to gray marketing. Do I have that 09:51:10</p> <p>21 right? 09:51:15</p> <p>22 A. Yes. 09:51:15</p> <p>23 Q. And do the materials in that section 09:51:15</p> <p>24 deal with the golf industry exclusively or just sort 09:51:18</p>	<p>1 A. They have been changed over the course 09:52:19</p> <p>2 of the time that I have taught the class. I have 09:52:21</p> <p>3 now taught the class three times. Each year I 09:52:24</p> <p>4 believe they have been slightly different, those 09:52:26</p> <p>5 materials have been slightly different. So in 09:52:29</p> <p>6 preparation for teaching each year, I reevaluate 09:52:32</p> <p>7 and -- I reevaluate the materials I have used before 09:52:35</p> <p>8 and add or subtract materials that were included. 09:52:39</p> <p>9 Q. So the course book itself doesn't have 09:52:42</p> <p>10 a section on gray materials as it deals with the 09:52:44</p> <p>11 golf industry, it is the supplemental materials. Do 09:52:47</p> <p>12 I understand that right? 09:52:50</p> <p>13 A. It is has a section on the gray 09:52:50</p> <p>14 market. It does not have a section on the gray 09:52:53</p> <p>15 market in relation to the golf industry. 09:52:56</p> <p>16 Q. Okay. And when you first started 09:52:58</p> <p>17 teaching, is it your understanding that in the first 09:53:00</p> <p>18 year, which I guess we'll get to here, '03 maybe, 09:53:03</p> <p>19 you provided supplemental materials that focused on 09:53:05</p> <p>20 gray marketing in the golf industry? 09:53:08</p> <p>21 MR. COLLINS: Asked and answered. 09:53:10</p> <p>22 Go ahead. 09:53:12</p> <p>23 BY THE WITNESS: 09:53:13</p> <p>24 A. In the first year that I taught the 09:53:13</p>
Page 19	Page 21
<p>1 of mention it? 09:51:24</p> <p>2 MR. COLLINS: I am sorry. I think you 09:51:25</p> <p>3 are misunderstanding some of the thrust of the 09:51:27</p> <p>4 testimony here, but -- so therefore, I object on 09:51:30</p> <p>5 grounds that you mangled the testimony. 09:51:35</p> <p>6 Go ahead and answer. 09:51:37</p> <p>7 BY THE WITNESS: 09:51:39</p> <p>8 A. There are, in the textbook itself, 09:51:40</p> <p>9 there is no -- I believe no mention of the golf 09:51:43</p> <p>10 industry at all. It is my supplemental materials 09:51:47</p> <p>11 that include that. 09:51:49</p> <p>12 BY MR. BESSETTE: 09:51:50</p> <p>13 Q. Okay. What supplementary materials 09:51:50</p> <p>14 are those? 09:51:51</p> <p>15 A. Every year in addition to the textbook 09:51:52</p> <p>16 I assign a course packet of supplemental materials 09:51:55</p> <p>17 that I believe are particularly useful in 09:51:59</p> <p>18 illustrating particular topics, and I chose some 09:52:07</p> <p>19 materials on the gold industry and the golf 09:52:08</p> <p>20 equipment industry in particular in the presentation 09:52:08</p> <p>21 of counterfeiting and gray marketing material. 09:52:11</p> <p>22 Q. And when did you add those 09:52:12</p> <p>23 supplementary materials, the particular ones on the 09:52:16</p> <p>24 golf industry? 09:52:19</p>	<p>1 course, I did include those materials, yes. 09:53:16</p> <p>2 BY MR. BESSETTE: 09:53:18</p> <p>3 Q. I'm sorry, you did? 09:53:18</p> <p>4 A. I did include those materials, yes. 09:53:18</p> <p>5 Q. Okay. Now, where did you find those 09:53:19</p> <p>6 materials? 09:53:20</p> <p>7 MR. COLLINS: And we're asking 09:53:23</p> <p>8 specifically with regard to the first year? 09:53:24</p> <p>9 MR. BESSETTE: Right. 09:53:26</p> <p>10 BY THE WITNESS: 09:53:26</p> <p>11 A. The first year that I taught the 09:53:27</p> <p>12 class, again, I followed pretty standard practice 09:53:29</p> <p>13 for new professors. I used materials that a person 09:53:32</p> <p>14 who had taught international business transactions 09:53:39</p> <p>15 introduced me to. 09:53:42</p> <p>16 BY MR. BESSETTE: 09:53:43</p> <p>17 Q. And the supplemental materials that 09:53:43</p> <p>18 you used starting in '03 and continuing to the 09:53:45</p> <p>19 present have been produced? 09:53:48</p> <p>20 A. Yes. I believe. And materials that I 09:53:49</p> <p>21 taught the last time that I taught have been 09:53:52</p> <p>22 produced. 09:53:55</p> <p>23 Q. Do you have in your possession the 09:53:56</p> <p>24 materials starting from the first time you taught to 09:53:59</p>

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<p>1 the present? 09:54:01</p> <p>2 A. I may. I'm not sure. 09:54:01</p> <p>3 Q. All right. Could you do a search for 09:54:03</p> <p>4 us and if you have them, would you produce them with 09:54:04</p> <p>5 counsel's permission? 09:54:08</p> <p>6 MR. COLLINS: Well, we will take it 09:54:08</p> <p>7 under advisement. What you are asking for is the 09:54:09</p> <p>8 materials from the first year and the second year, 09:54:13</p> <p>9 to the extent they are different from the materials 09:54:15</p> <p>10 for the third year, which I believe have been 09:54:18</p> <p>11 produced? 09:54:21</p> <p>12 MR. BESSETTE: Yes. 09:54:21</p> <p>13 BY MR. BESSETTE: 09:54:23</p> <p>14 Q. And I believe your testimony was you 09:54:23</p> <p>15 kind of look to change and look to update. So if 09:54:25</p> <p>16 you have materials from '03 or prior years before 09:54:28</p> <p>17 the ones you produced that are different than the 09:54:31</p> <p>18 ones you produced, I would like to see those. 09:54:33</p> <p>19 MR. COLLINS: We will take it under 09:54:34</p> <p>20 advisement. 09:54:36</p> <p>21 BY MR. BESSETTE: 09:54:36</p> <p>22 Q. Do the materials either in the 09:54:37</p> <p>23 textbook or the supplemental materials deal with the 09:54:38</p> <p>24 economic and financial consequences of gray markets 09:54:42</p>	<p>1 classroom, would be to give students enough material 09:55:26</p> <p>2 that they have a good basis for discussion. And 09:55:30</p> <p>3 then I will come to the class with additional 09:55:32</p> <p>4 information, additional materials to make for 09:55:34</p> <p>5 interesting classroom experience, as well as 09:55:39</p> <p>6 interesting reading. 09:55:42</p> <p>7 So I'm not really -- I don't 09:55:43</p> <p>8 remember entirely whether the topics specifically 09:55:45</p> <p>9 asked about are contained in the written materials 09:55:48</p> <p>10 or whether they are contained in my head when I walk 09:55:51</p> <p>11 into the classroom. 09:55:55</p> <p>12 BY MR. BESSETTE: 09:55:57</p> <p>13 Q. But as you sit here, it is your 09:55:57</p> <p>14 understanding that whether in the written materials 09:55:59</p> <p>15 or in your head, your class deals with the financial 09:56:01</p> <p>16 and economic consequences of the gray market to 09:56:03</p> <p>17 manufacturers? 09:56:07</p> <p>18 A. Yes. 09:56:07</p> <p>19 Q. Okay. And if it is not in the written 09:56:08</p> <p>20 materials, where did you get the source material for 09:56:11</p> <p>21 that information? 09:56:14</p> <p>22 A. From a variety of sources. One place 09:56:15</p> <p>23 is through -- let me back up. In preparing for 09:56:17</p> <p>24 class, in addition to obviously reading the 09:56:21</p>
Page 23	Page 25
<p>1 on manufacturers, do you know? 09:54:46</p> <p>2 MR. COLLINS: The documents speak for 09:54:48</p> <p>3 themselves. 09:54:50</p> <p>4 Go ahead. 09:54:51</p> <p>5 BY THE WITNESS: 09:54:51</p> <p>6 A. Could you ask the question again? 09:54:52</p> <p>7 Sorry. 09:54:53</p> <p>8 BY MR. BESSETTE: 09:54:53</p> <p>9 Q. Yeah. 09:54:53</p> <p>10 Do the supplemental materials -- 09:54:54</p> <p>11 well, actually, strike that. 09:54:54</p> <p>12 Do the materials on gray 09:54:56</p> <p>13 marketing, whether in the textbook or the 09:54:57</p> <p>14 supplemental materials, deal with the economic and 09:54:59</p> <p>15 financial consequences of the gray market on 09:55:02</p> <p>16 manufacturers? 09:55:07</p> <p>17 MR. COLLINS: Same objection. 09:55:07</p> <p>18 Go ahead. 09:55:08</p> <p>19 BY THE WITNESS: 09:55:08</p> <p>20 A. I don't actually know whether the 09:55:09</p> <p>21 materials themselves contain that or whether that is 09:55:10</p> <p>22 part of the class that I bring out during class 09:55:13</p> <p>23 discussion. So to clarify, often in preparing for a 09:55:16</p> <p>24 class, a professor, or at least in my strategy in a 09:55:23</p>	<p>1 materials that I have asked my students to read, I 09:56:24</p> <p>2 also do additional reading. And in the course of 09:56:27</p> <p>3 the time that I have been teaching at IU, I have 09:56:31</p> <p>4 read countless scholarly articles that supplement 09:56:35</p> <p>5 the materials that I teach. 09:56:39</p> <p>6 Q. Countless scholarly articles, is that 09:56:43</p> <p>7 what you said? 09:56:47</p> <p>8 A. Yes. 09:56:47</p> <p>9 Q. Do you know any off the top of your 09:56:47</p> <p>10 head? 09:56:51</p> <p>11 MR. COLLINS: With regard to gray 09:56:51</p> <p>12 marketing? 09:56:52</p> <p>13 MR. BESSETTE: Yes. 09:56:53</p> <p>14 BY THE WITNESS: 09:56:53</p> <p>15 A. Yeah, sure. Some of them were cited 09:56:54</p> <p>16 in my reports and are in the records. 09:56:56</p> <p>17 BY MR. BESSETTE: 09:56:56</p> <p>18 Q. Well, go ahead and turn to page I 09:56:59</p> <p>19 guess 3 and 4 of your report where you cite eight 09:57:00</p> <p>20 articles related to gray marketing that you -- well, 09:57:05</p> <p>21 strike that. 09:57:05</p> <p>22 You cite eight articles related to 09:57:10</p> <p>23 gray marketing. I take it you reviewed those 09:57:13</p> <p>24 articles which -- in the process of your work in 09:57:15</p>

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1	this case? 09:57:18	1	A. That's correct. 09:59:13
2	A. Yes. 09:57:18	2	Q. Do you teach courses in marketing? 09:59:14
3	Q. Did you review any other academic 09:57:19	3	A. No. 09:59:16
4	articles on gray marketing in your work in this case 09:57:23	4	Q. Have you ever taught a course in 09:59:16
5	that you have not listed here? 09:57:27	5	marketing? 09:59:18
6	A. No, I don't think so. Let me actually 09:57:28	6	A. No. 09:59:19
7	rephrase. After receiving Mr. Frazier's report, I 09:57:32	7	Q. Have you ever taken a course in 09:59:19
8	also reviewed the articles that he submitted that 09:57:38	8	marketing? 09:59:21
9	were not on this list. 09:57:42	9	A. That's thinking back a long ways. I 09:59:22
10	Q. Okay. So prior to receiving his 09:57:43	10	don't think so. 09:59:27
11	report, you didn't review anything more than the 09:57:45	11	Q. Have you ever published a paper on 09:59:27
12	eight articles in your report? 09:57:48	12	gray marketing? 09:59:30
13	MR. COLLINS: In connection with this 09:57:49	13	A. No. 09:59:31
14	case? 09:57:51	14	Q. Have you ever published an article or 09:59:31
15	MR. BESSETTE: Yes. 09:57:51	15	book on gray marketing? 09:59:33
16	BY THE WITNESS: 09:57:52	16	A. No. 09:59:35
17	A. Correct. 09:57:53	17	Q. Have you ever given a presentation on 09:59:35
18	BY MR. BESSETTE: 09:57:53	18	gray marketing? 09:59:37
19	Q. Okay. How did you -- what search did 09:57:53	19	MR. COLLINS: Outside the class work 09:59:38
20	you undertake to decide on these eight articles to 09:57:54	20	that she has described? 09:59:41
21	review? 09:57:58	21	MR. BESSETTE: Yeah. 09:59:43
22	A. I did -- I went through the process 09:57:58	22	By MR. BESSETTE: 09:59:43
23	that I often go through in performing my research. 09:58:0	23	Q. I am not viewing teaching law students 09:59:45
24	I got online, I looked at our library's holdings, I 09:58:05	24	as a presentation. That's your profession. 09:59:48
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1	used databases that are available to me as a 09:58:11	1	Have you ever given a presentation 09:59:50
2	professor, and looked for articles that I thought 09:58:16	2	outside the law school on gray marketing? 09:59:52
3	were useful and pertinent. 09:58:20	3	A. No. 09:59:54
4	Q. Why did you exclude some and include 09:58:23	4	Q. How about on marketing generally. 09:59:56
5	these eight? 09:58:27	5	Have you ever give a presentation on marketing 09:59:59
6	MR. COLLINS: Foundation. 09:58:27	6	generally? 10:00:02
7	Go ahead. 09:58:28	7	A. No. 10:00:02
8	BY THE WITNESS: 09:58:28	8	Q. Prior to your employment as an 10:00:02
9	A. I tried to find articles that I 09:58:30	9	assistant -- I am sorry -- as an assistant 10:00:09
10	thought specifically dealt with the questions that I 09:58:32	10	professor -- 10:00:16
11	was asked to address, the types of profiles that 09:58:34	11	A. Associate professor. 10:00:18
12	make a business particularly susceptible to gray 09:58:39	12	Q. Oh, is it associate? I am sorry. 10:00:21
13	marketing, and also the kinds of impacts that gray 09:58:43	13	Okay. 10:00:23
14	marketing can have on a business. 09:58:46	14	So prior to your employment as an 10:00:24
15	BY MR. BESSETTE: 09:58:48	15	associate professor, had you ever -- Strike that. 10:00:26
16	Q. In your review that produced the eight 09:58:48	16	Prior to your employment as an 10:00:32
17	articles that are listed in your report, do you 09:58:51	17	associate professor, did you have any involvement 10:00:34
18	recall whether you reviewed any of the articles that 09:58:53	18	with gray marketing? 10:00:39
19	you saw listed in Mr. Frazier's report, Exhibit 305? 09:58:55	19	MR. COLLINS: Vague and ambiguous. 10:00:41
20	A. No, I don't think I did. 09:59:01	20	BY THE WITNESS: 10:00:45
21	Q. To the best of your knowledge, in your 09:59:03	21	A. I would agree. I'm not sure what you 10:00:45
22	search for articles related to gray marketing, you 09:59:07	22	mean. 10:00:47
23	didn't come across any of the ones Mr. Frazier 09:59:10	23	BY MR. BESSETTE: 10:00:47
24	listed? 09:59:13	24	Q. Well, did you ever get involved with 10:00:48

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<p>1 gray marketing? 10:00:50</p> <p>2 MR. COLLINS: Same objection. 10:00:50</p> <p>3 BY MR. BESSETTE: 10:00:52</p> <p>4 Q. Whether in your life as a lawyer in 10:00:52</p> <p>5 practice, doing research about it, studying it in 10:00:55</p> <p>6 school, I mean, anything related to gray marketing. 10:01:00</p> <p>7 Did you have any concept of what gray marketing was? 10:01:03</p> <p>8 MR. COLLINS: Compound, vague and 10:01:06</p> <p>9 ambiguous. 10:01:09</p> <p>10 BY THE WITNESS: 10:01:10</p> <p>11 A. Yeah, there were a lot of questions in 10:01:11</p> <p>12 what you asked. The contact that I would say I had 10:01:12</p> <p>13 most with gray marketing before I became a professor 10:01:16</p> <p>14 is as a consumer. 10:01:19</p> <p>15 BY MR. BESSETTE: 10:01:20</p> <p>16 Q. Okay. Nothing beyond being a 10:01:20</p> <p>17 consumer? 10:01:23</p> <p>18 A. I don't believe so. 10:01:24</p> <p>19 Q. Now, prior to joining I guess Indiana 10:01:33</p> <p>20 University faculty, you were an attorney, is that 10:01:45</p> <p>21 right? 10:01:48</p> <p>22 A. Correct. 10:01:48</p> <p>23 Q. Well, strike that. 10:01:57</p> <p>24 You worked as an attorney? 10:01:58</p>	<p>1 Q. And then joined the faculty at Indiana 10:02:46</p> <p>2 University School of Law in June 2003? 10:02:51</p> <p>3 A. Correct. 10:02:52</p> <p>4 Q. Okay. What did you do between that -- 10:02:53</p> <p>5 or in that time period? 10:02:55</p> <p>6 A. My husband and I who had decided -- 10:02:56</p> <p>7 decided together that we wanted to leave our law 10:03:00</p> <p>8 firms in New York, and wanted to leave New York as 10:03:04</p> <p>9 well. We bought a pickup truck and drove around the 10:03:07</p> <p>10 country for a year or a little bit over a year. We 10:03:12</p> <p>11 got married in the middle of that period. We drove 10:03:14</p> <p>12 from the Florida Keys to the Arctic Circle, and 10:03:18</p> <p>13 everywhere in between. 10:03:18</p> <p>14 Q. Wow. Sounds interesting. 10:03:18</p> <p>15 A. And slept in the back of the pickup 10:03:24</p> <p>16 truck. 10:03:28</p> <p>17 Q. That's interesting. 10:03:28</p> <p>18 A. In addition, then we settled in San 10:03:30</p> <p>19 Diego for a year where I was looking for my academic 10:03:34</p> <p>20 job. 10:03:39</p> <p>21 Q. Okay. Now, let's see. You graduated 10:03:39</p> <p>22 from law school in June 1998? 10:03:46</p> <p>23 A. Correct. 10:03:49</p> <p>24 Q. So as we sit here today, you have been 10:03:49</p>
Page 31	Page 33
<p>1 A. Yes. 10:01:59</p> <p>2 Q. All right. Did you ever represent a 10:02:00</p> <p>3 party in a matter involving gray marketing as an 10:02:02</p> <p>4 attorney? 10:02:06</p> <p>5 A. No. Actually, can you ask that 10:02:06</p> <p>6 question again? I'm not -- 10:02:10</p> <p>7 Q. Sure.</p> <p>8 A. -- I need to think about it again.</p> <p>9 MR. BESSETTE: Go ahead and just</p> <p>10 repeat it.</p> <p>11 (Record read.)</p> <p>12 MR. COLLINS: I'm sorry. I should 10:02:20</p> <p>13 have objected on grounds of vague and ambiguous. 10:02:20</p> <p>14 You might want to clean it up just a touch. I 10:02:24</p> <p>15 mean -- 10:02:24</p> <p>16 MR. BESSETTE: Let me ask it again. 10:02:26</p> <p>17 BY MR. BESSETTE: 10:02:26</p> <p>18 Q. Did you ever represent a party in a 10:02:27</p> <p>19 matter involving gray marketing? 10:02:30</p> <p>20 A. Okay. No. 10:02:32</p> <p>21 Q. Now, if I am reading your resume 10:02:37</p> <p>22 right, you last worked at Clifford Chance in 10:02:40</p> <p>23 April 2001, is that right? 10:02:44</p> <p>24 A. Correct. 10:02:45</p>	<p>1 a lawyer for I guess eight years? 10:03:52</p> <p>2 A. Yeah. 10:03:54</p> <p>3 Q. Are you currently admitted to the New 10:03:55</p> <p>4 York Bar? 10:04:07</p> <p>5 A. Yes. 10:04:07</p> <p>6 Q. Okay. When were you first admitted to 10:04:07</p> <p>7 the New York Bar? 10:04:10</p> <p>8 A. I was admitted -- oh, boy, I don't 10:04:10</p> <p>9 remember. What does it say? Let me look. 10:04:12</p> <p>10 Q. It doesn't say, that's -- 10:04:14</p> <p>11 A. Oh, yeah? 10:04:14</p> <p>12 Q. Or at least I didn't see it. 10:04:14</p> <p>13 A. It was -- so I went to Columbia. I 10:04:16</p> <p>14 came back and was then admitted. So it must have 10:04:20</p> <p>15 been 2000 by the time the admission ceremony 10:04:26</p> <p>16 actually took place. 10:04:32</p> <p>17 Q. Okay. You graduated in June 1998 from 10:04:33</p> <p>18 Harvard, is that right? 10:04:36</p> <p>19 A. Correct. 10:04:37</p> <p>20 Q. Did you take the bar that summer? 10:04:37</p> <p>21 A. I did take the bar that summer. 10:04:39</p> <p>22 Q. The New York Bar? 10:04:41</p> <p>23 A. Yes. 10:04:43</p> <p>24 Q. Did you pass it? 10:04:44</p>

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1 A. No. 10:04:46  
 2 Q. And then what did you do? 10:04:46  
 3 A. I was planning to go to Columbia 10:04:47  
 4 already. I went to Columbia. I worked there at a 10:04:51  
 5 law school and also in a human rights organization 10:04:55  
 6 in Bogota, Columbia. While I was there, I also came 10:04:59  
 7 back to take the bar again, passed it and then was 10:05:01  
 8 admitted. 10:05:04  
 9 Q. Okay. And the second time you took 10:05:05  
 10 the bar was in 2000? 10:05:06  
 11 A. No, it was in 1999 February. 10:05:08  
 12 Q. The next year, 1999, okay. 10:05:12  
 13 A. Correct. The next available time. 10:05:13  
 14 Q. Again, the New York Bar? 10:05:15  
 15 A. Yes. 10:05:17  
 16 Q. And passed it that time? 10:05:18  
 17 A. Yes. 10:05:19  
 18 Q. And then what did you do after passing 10:05:20  
 19 the bar in terms of working? 10:05:26  
 20 A. I was already in Columbia, committed 10:05:28  
 21 to working there for a year. And I fulfilled that 10:05:30  
 22 obligation, and then came back to the offer that I 10:05:34  
 23 had open for my law firm, Clifford Chance, and began 10:05:37  
 24 working as I had agreed with them before I went to 10:05:41

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1 Columbia. 10:05:44  
 2 Q. Okay. So through July 1999 at 10:05:46  
 3 Columbia, and then started back at Clifford Chance 10:05:49  
 4 in September '99 then, is that right? 10:05:53  
 5 A. That's correct. 10:05:54  
 6 Q. When did you decide you wanted to, you 10:05:55  
 7 know, go into teaching, being a law professor? 10:06:01  
 8 A. It is hard to remember when I didn't 10:06:03  
 9 think I might be a teacher. I think I finally 10:06:06  
 10 ultimately decided that I wanted to go into 10:06:10  
 11 academia -- well, no. Let me rephrase. That I 10:06:15  
 12 wanted to be a law professor during the trip that my 10:06:17  
 13 husband and I took in 2001 and 2002. 10:06:21  
 14 Q. Okay. When -- Professor, when do you 10:06:33  
 15 believe you became knowledgeable about the gray 10:06:44  
 16 market, gray marketing, I should say? 10:06:47  
 17 A. What do you mean by knowledgeable? 10:06:50  
 18 Q. Beyond a consumer, beyond somebody 10:06:52  
 19 just being a consumer, but having specialized 10:06:56  
 20 knowledge about gray marketing. When do you think 10:07:00  
 21 you attained that specialized knowledge? 10:07:03  
 22 A. My knowledge in the area has been 10:07:03  
 23 evolving, has been developing over the course of the 10:07:06  
 24 last three years as I have been teaching at Indiana 10:07:09

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1 University. 10:07:13  
 2 Q. Can you explain for me marketing as a 10:07:13  
 3 discipline in academia and business? 10:07:16  
 4 MR. COLLINS: Outside the scope of the 10:07:20  
 5 opinion. 10:07:22  
 6 BY THE WITNESS: 10:07:22  
 7 A. It's not my area of expertise. 10:07:23  
 8 BY MR. BESSETTE: 10:07:23  
 9 Q. What is not? 10:07:25  
 10 A. Marketing. 10:07:26  
 11 Q. Okay. So do you acknowledge you are 10:07:27  
 12 not an expert in marketing? 10:07:32  
 13 A. In marketing generally? 10:07:33  
 14 Q. Yes. 10:07:35  
 15 A. Yes. 10:07:35  
 16 Q. So you view gray marketing as 10:07:36  
 17 something different than marketing generally? 10:07:40  
 18 A. Yes. 10:07:42  
 19 Q. Can you explain that to me? 10:07:42  
 20 A. Sure. The reason I teach gray 10:07:44  
 21 marketing in my class, the reason I believe that the 10:07:47  
 22 authors of my book have included it in a book on 10:07:50  
 23 international business transactions is because the 10:07:52  
 24 gray market can have significant impact on a 10:07:56

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1 business. And as a result, both I and the authors 10:07:59  
 2 of the book I would expect, though I don't know 10:08:02  
 3 their exact reasoning, believe that students who are 10:08:05  
 4 holding themselves out as particularly knowledgeable 10:08:09  
 5 about international business transactions ought to 10:08:12  
 6 have some background in gray marketing. 10:08:16  
 7 (Off the record 10:08:16  
 8 discussion.) 10:08:16  
 9 BY MR. BESSETTE: 10:08:28  
 10 Q. So I take it if I asked you what is 10:08:28  
 11 commonly known as the four Ps of marketing, you 10:08:43  
 12 wouldn't know what they were? 10:08:47  
 13 A. No. 10:08:48  
 14 Q. Okay. Let me ask you, do you think 10:08:48  
 15 holding yourself out as an expert in gray marketing 10:08:51  
 16 without having any background knowledge or 10:08:55  
 17 specialized experience in marketing generally, you 10:08:59  
 18 can feel comfortable that you are an expert in gray 10:09:03  
 19 marketing without having that marketing generally 10:09:06  
 20 background? 10:09:10  
 21 MR. COLLINS: I think you are calling 10:09:11  
 22 for a legal opinion. 10:09:12  
 23 MR. BESSETTE: No, I am not. 10:09:14  
 24 MR. COLLINS: What do you mean by 10:09:15

10 (Pages 34 to 37)

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1 expert then? 10:09:16

2 MR. BESSETTE: All right. Let me 10:09:17

3 withdraw the question. 10:09:17

4 BY MR. BESSETTE: 10:09:17

5 Q. Let me ask you this: You are here 10:09:38

6 today as an expert in gray marketing. Do I 10:09:41

7 understand that right? 10:09:50

8 A. Yes. 10:09:52

9 Q. And that expertise has been developed 10:09:52

10 over the last three years in connection with your 10:09:55

11 teaching duties at the Indiana University School of 10:09:58

12 Law? 10:10:03

13 A. Correct. 10:10:03

14 Q. All right. You have no background, 10:10:04

15 expertise or knowledge in marketing generally? 10:10:05

16 A. Correct. 10:10:07

17 Q. To what extent in your view, 10:10:08

18 Professor, is gray marketing related to marketing 10:10:11

19 generally? 10:10:18

20 A. Again, I am not an expert in marketing 10:10:20

21 generally. So how much it relates and in what 10:10:23

22 manners it relates to marketing generally, I 10:10:29

23 wouldn't be qualified to answer. 10:10:32

24 Q. Okay. And when do you believe you 10:10:35

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1 became an expert in gray marketing? 10:10:47

2 A. I'm not sure exactly what you mean by 10:10:49

3 the question. 10:10:54

4 Q. Let me ask you this -- let me 10:10:55

5 withdraw. 10:10:58

6 MR. COLLINS: I should have objected. 10:10:59

7 Go ahead. 10:11:00

8 BY MR. BESSETTE: 10:11:01

9 Q. Would you consider yourself an expert 10:11:02

10 in gray marketing the first year you taught a class 10:11:04

11 that had one component of it gray marketing? 10:11:09

12 A. I think my students -- 10:11:12

13 MR. COLLINS: I'm sorry. Objection, 10:11:12

14 vague and ambiguous when you use the word "expert," 10:11:13

15 because one doesn't know the context you are using 10:11:17

16 it. 10:11:17

17 In any event, go ahead and answer. 10:11:20

18 MR. BESSETTE: Well, let me clarify. 10:11:20

19 She has testified that she is holding herself out as 10:11:20

20 an expert in gray marketing. 10:11:24

21 MR. COLLINS: In connection with this 10:11:25

22 litigation, yes. 10:11:26

23 MR. BESSETTE: Correct. And that's 10:11:26

24 the definition I am using, so... 10:11:27

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1 BY MR. BESSETTE: 10:11:28

2 Q. To do that, you are sitting here today 10:11:30

3 as an expert in gray marketing in connection with 10:11:32

4 this case. When do you believe you first acquired 10:11:37

5 the requisite knowledge and expertise to sit in this 10:11:39

6 chair today and offer testimony as an expert in gray 10:11:42

7 marketing? 10:11:49

8 MR. COLLINS: You may answer.

9 BY THE WITNESS:

10 A. To offer testimony in this case as an

11 expert in gray marketing?

12 BY MR. BESSETTE:

13 Q. No. Do you understand the question

14 is, when do you believe you acquired the requisite 10:11:50

15 knowledge and expertise to hold yourself out as an 10:11:53

16 expert in gray marketing, such as you are doing 10:11:55

17 today in this case? 10:11:59

18 A. Okay. Again, I think I answered this 10:11:59

19 question already. Over the course of the last 10:12:02

20 three years, I have been evolving and developing as 10:12:04

21 an expert in a variety of fields, including the gray 10:12:08

22 market. 10:12:11

23 Q. I understand the evolvement part. Can 10:12:11

24 you tell me when you believe you acquired a certain 10:12:16

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1 knowledge of level and expertise that you deemed 10:12:19

2 yourself qualified to be an expert such as you are 10:12:22

3 holding yourself out today? 10:12:25

4 A. It is a hard answer to give you, since 10:12:27

5 I didn't assess myself in that way until after I was 10:12:29

6 asked to serve in this case. However, the first 10:12:32

7 time I walked into a classroom to reach gray market 10:12:35

8 issues, I certainly had to have acquired the 10:12:41

9 knowledge that I believed was necessary in order to 10:12:41

10 educate -- I had to acquire the knowledge that was 10:12:41

11 necessary in order to educate students about issues 10:12:50

12 that they may not have known about, or may have had 10:12:53

13 quite a lot of knowledge about before I walked in 10:12:56

14 the room, and nonetheless, be able to teach them 10:12:59

15 something. And as a result, I think, of the first 10:13:02

16 time I walked into a classroom to teach gray market 10:13:04

17 issues, I was certainly holding myself out as an 10:13:07

18 expert to my students. 10:13:10

19 Q. And to acquire the knowledge to hold 10:13:11

20 yourself out as an expert to your student was 10:13:13

21 acquired by what, reading the course book or what 10:13:16

22 did you do to acquire the knowledge that you think 10:13:19

23 was sufficient to hold yourself out as an expert to 10:13:22

24 your students? 10:13:25

11 (Pages 38 to 41)



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<p>1 A. What I typically do in preparing for 10:13:25</p> <p>2 class. 10:13:28</p> <p>3 Q. And tell me what that is, please. 10:13:28</p> <p>4 MR. COLLINS: Asked and answered. 10:13:31</p> <p>5 Go ahead. 10:13:31</p> <p>6 BY THE WITNESS: 10:13:32</p> <p>7 A. Again, I read the materials that are 10:13:33</p> <p>8 necessary -- that I have assigned to my students. I 10:13:35</p> <p>9 also read outside materials that are out there for 10:13:38</p> <p>10 them to read, but I am fairly sure they don't read. 10:13:42</p> <p>11 BY MR. BESSETTE: 10:13:46</p> <p>12 Q. Fair enough. So outside of reading 10:13:46</p> <p>13 materials that other people have published, anything 10:13:48</p> <p>14 else to gain the knowledge that you think is 10:13:57</p> <p>15 appropriate to hold yourself out as an expert as you 10:14:00</p> <p>16 do to your students? 10:14:04</p> <p>17 A. No. 10:14:05</p> <p>18 Q. Okay. And how many articles would you 10:14:05</p> <p>19 say you have read in total dealing with the gray 10:14:07</p> <p>20 market or gray marketing activity? 10:14:09</p> <p>21 A. Again, that's -- that would be hard to 10:14:12</p> <p>22 say. I don't keep a tally. 10:14:14</p> <p>23 Q. I mean, a dozen, two dozen, three 10:14:16</p> <p>24 dozen? I mean, can you give me an estimate? 10:14:21</p>	<p>1 A. Again, the number is hard to estimate, 10:15:12</p> <p>2 simply because the kinds of materials I review may 10:15:14</p> <p>3 be very lengthy, they may be very short. So if I -- 10:15:18</p> <p>4 I could easily tell you that I have reviewed 90 10:15:20</p> <p>5 published pieces in the gray market, that may not be 10:15:24</p> <p>6 accurate, depending on the length of the pieces that 10:15:28</p> <p>7 I was reviewing. 10:15:31</p> <p>8 Q. You've never served as an expert 10:15:32</p> <p>9 witness before in litigation? 10:15:34</p> <p>10 A. Correct. 10:15:35</p> <p>11 Q. Never testified in court as an expert 10:15:36</p> <p>12 witness either? 10:15:41</p> <p>13 A. Correct. 10:15:41</p> <p>14 Q. Somewhere in here, I think Paragraph 8 10:15:41</p> <p>15 of your report, Exhibit 303, you say you are being 10:15:55</p> <p>16 compensated for the time spent in this matter at 10:15:59</p> <p>17 your current hourly rate of 425. How did you 10:16:04</p> <p>18 determine what your current hourly rate is? 10:16:07</p> <p>19 A. Again, as we just discussed, I had not 10:16:09</p> <p>20 served as an expert before, had not given expert 10:16:11</p> <p>21 testimony before. And as a result, sought advise of 10:16:14</p> <p>22 colleagues, both in fields of securities litigation 10:16:17</p> <p>23 and also colleagues who are professors. And I also 10:16:20</p> <p>24 believe I spoke to the partners with whom I worked 10:16:28</p>
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<p>1 A. Again, it is hard to say simply 10:14:23</p> <p>2 because I don't keep a tally, I don't keep a log. 10:14:26</p> <p>3 And for each section in each class that I teach, of 10:14:29</p> <p>4 which now there have been many over the course of 10:14:32</p> <p>5 the last three years, I do the same. I engage in 10:14:35</p> <p>6 the same activities. 10:14:39</p> <p>7 Q. Well, I mean, just give me a sense for 10:14:41</p> <p>8 how many articles you review, published articles 10:14:44</p> <p>9 that deal with gray marketing? 10:14:47</p> <p>10 MR. COLLINS: May I? You mean ever? 10:14:52</p> <p>11 MR. BESSETTE: In total. 10:14:52</p> <p>12 MR. COLLINS: The total number of 10:14:52</p> <p>13 articles ever reviewed to the extent that Professor 10:14:53</p> <p>14 Ochoa can give you a number. 10:14:55</p> <p>15 BY MR. BESSETTE: 10:14:55</p> <p>16 Q. Well, if it is easier to do it by 10:14:55</p> <p>17 year, maybe. If you can think of a particular class 10:14:58</p> <p>18 year and you review materials, as you say, to get 10:15:00</p> <p>19 ready. How many -- let's do it that way, if that's 10:15:03</p> <p>20 easier. 10:15:03</p> <p>21 How many articles or books or 10:15:03</p> <p>22 publications would you review that deal with gray 10:15:04</p> <p>23 marketing activity in any given year, say, in the 10:15:07</p> <p>24 last three years? 10:15:10</p>	<p>1 at Clifford Chance. 10:16:31</p> <p>2 Q. And how did you settle on 425? 10:16:33</p> <p>3 A. Given the information that I received 10:16:36</p> <p>4 from all the people with whom I spoke, it seemed 10:16:38</p> <p>5 like a reasonable rate. 10:16:41</p> <p>6 Q. Did Mr. Collins or anyone on the 10:16:42</p> <p>7 plaintiffs -- plaintiff's lawyers have input into 10:16:45</p> <p>8 what your rate should be? 10:16:47</p> <p>9 A. They agreed. 10:16:49</p> <p>10 MR. COLLINS: I think what we did was 10:16:49</p> <p>11 to pay it. 10:16:51</p> <p>12 BY MR. BESSETTE: 10:16:52</p> <p>13 Q. But before you settled on the rate, 10:16:52</p> <p>14 did you inquire of the plaintiff's lawyers whether 10:16:54</p> <p>15 that was appropriate? Were they part of the 10:16:57</p> <p>16 information you took into account in deciding on 10:16:59</p> <p>17 425? 10:17:08</p> <p>18 A. No. I stated my rate, they agreed. 10:17:08</p> <p>19 Q. Okay. On page 3, again of Paragraph 9 10:17:12</p> <p>20 of your initial report, you say, "I am familiar with 10:18:12</p> <p>21 the causes and effects of gray market activity." 10:18:19</p> <p>22 That familiarity with the causes 10:18:23</p> <p>23 and effects, again, does that come from what you 10:18:25</p> <p>24 have told us here today, your reading of various 10:18:27</p>

12 (Pages 42 to 45)



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<p>1 articles and teaching at the law school? 10:18:30</p> <p>2 A. Yes. 10:18:32</p> <p>3 Q. Now, if you would turn to page 15 and 10:18:32</p> <p>4 16 of your initial report. It is actually the last 10:19:23</p> <p>5 sentence of Paragraph 24 on page 16, but if you want 10:19:30</p> <p>6 to see that paragraph in total, you say that, "A 10:19:33</p> <p>7 significant amount of the literature on gray 10:19:38</p> <p>8 marketing discusses it in an international context, 10:19:41</p> <p>9 given the increased opportunities for arbitrage once 10:19:46</p> <p>10 largely undifferentiated products are sold 10:19:50</p> <p>11 internationally." 10:19:54</p> <p>12 How do you define "significant" in 10:19:55</p> <p>13 that sentence, Professor? 10:19:57</p> <p>14 A. Again, I am not comfortable with 10:19:59</p> <p>15 giving a percentage. It is a feel more than a 10:20:09</p> <p>16 quantitative measure. 10:20:13</p> <p>17 Q. I mean, is it a super majority, a 10:20:15</p> <p>18 majority, some? 10:20:18</p> <p>19 A. A good body. 10:20:19</p> <p>20 Q. So that would be less than a majority? 10:20:20</p> <p>21 A. Again, I'm not sure about the 10:20:24</p> <p>22 percentages. I would say it is somewhere -- well, 10:20:28</p> <p>23 I'm just not sure about the percentages. It is a 10:20:31</p> <p>24 feel. It is a lot of material on gray marketing. 10:20:33</p>	<p>1 international context? 10:21:57</p> <p>2 A. In my experience of reading articles 10:21:58</p> <p>3 on gray marketing and in pulling up articles on gray 10:22:00</p> <p>4 marketing and seeing articles on gray marketing, 10:22:02</p> <p>5 those which I have read, those I have seen titled, 10:22:05</p> <p>6 those which I have scanned, a significant portion of 10:22:09</p> <p>7 those deal with gray marketing in the international 10:22:11</p> <p>8 context. 10:22:14</p> <p>9 Q. So what you are saying is Paragraph 10:22:14</p> <p>10 24, that last sentence should say a significant 10:22:18</p> <p>11 amount of the literature on gray marketing that you 10:22:19</p> <p>12 have reviewed discuss it in an international 10:22:22</p> <p>13 context? 10:22:26</p> <p>14 A. I don't think that would be accurate. 10:22:27</p> <p>15 Q. How can you say that a significant 10:22:28</p> <p>16 amount of the total body of literature, which you 10:22:30</p> <p>17 are implying to me here today when you don't know 10:22:34</p> <p>18 how many that is, how can you say a significant 10:22:36</p> <p>19 amount deals with international? I am just curious. 10:22:41</p> <p>20 MR. COLLINS: Misstates the testimony. 10:22:44</p> <p>21 Go ahead and answer. 10:22:45</p> <p>22 BY THE WITNESS: 10:22:46</p> <p>23 A. Again, I stated that I wouldn't be 10:22:47</p> <p>24 able to give you a percentage. And the reason I 10:22:48</p>
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<p>1 Q. Going back I guess to pages 3 and 4, 10:20:42</p> <p>2 the eight articles, the eight academic articles that 10:20:52</p> <p>3 you reviewed in connection with your work in this 10:20:54</p> <p>4 case. I think I already have the answer to this, 10:20:58</p> <p>5 but that's not the universe of academic literature 10:20:59</p> <p>6 related to gray marketing, right? 10:21:05</p> <p>7 A. Correct. 10:21:06</p> <p>8 Q. Okay. How many academic articles are 10:21:07</p> <p>9 you aware of that deal with gray marketing? 10:21:10</p> <p>10 MR. COLLINS: In the universe? 10:21:13</p> <p>11 MR. BESSETTE: Yeah. 10:21:16</p> <p>12 BY MR. BESSETTE: 10:21:16</p> <p>13 Q. How many exist? 10:21:17</p> <p>14 A. I don't know. 10:21:18</p> <p>15 Q. No sense at all? 10:21:19</p> <p>16 A. It is like any area. If you ask me to 10:21:20</p> <p>17 give you a sense of how many academic articles exist 10:21:22</p> <p>18 in the area in which I focus my research, I couldn't 10:21:26</p> <p>19 even venture a guess. And it would be the same with 10:21:32</p> <p>20 gray marketing. 10:21:35</p> <p>21 Q. Well, if you don't know how many 10:21:36</p> <p>22 articles about gray marketing exist, how can you 10:21:43</p> <p>23 assert that there is a significant amount of the 10:21:47</p> <p>24 literature, as you do here, dealing with it in an 10:21:49</p>	<p>1 wouldn't be able to give you a percentage is because 10:22:52</p> <p>2 I haven't tallied up how many articles there are, 10:22:53</p> <p>3 how many of them deal with international gray 10:22:57</p> <p>4 marketing. It is my experience in not just in 10:23:01</p> <p>5 reviewing articles, but also in seeing the titles of 10:23:04</p> <p>6 articles and doing research that pulls up lists of 10:23:06</p> <p>7 articles, that a significant percentage of the 10:23:10</p> <p>8 articles that are out there deal with gray marketing 10:23:14</p> <p>9 in the international context. 10:23:18</p> <p>10 Q. That's your basis for this statement? 10:23:18</p> <p>11 A. Let me rephrase. They either deal 10:23:18</p> <p>12 specifically with gray marketing in the 10:23:18</p> <p>13 international context, or at least touch on the 10:23:20</p> <p>14 issue. 10:23:21</p> <p>15 Q. That's the basis for your statement? 10:23:21</p> <p>16 A. Yes. 10:23:23</p> <p>17 Q. And if you look at Exhibit 304, your 10:23:23</p> <p>18 rebuttal report, in Paragraph 4, which is on page 2, 10:23:33</p> <p>19 second sentence, you say, "The overwhelming 10:23:47</p> <p>20 attention national/international gray marketing 10:23:51</p> <p>21 receives in the academic literature." 10:23:56</p> <p>22 Is that also based on -- what is 10:24:00</p> <p>23 that sentence based on? 10:24:00</p> <p>24 A. The same. 10:24:01</p>

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<p>1 Q. Okay. The eight articles you have 10:24:02</p> <p>2 listed and your research and reviewing any number of 10:24:03</p> <p>3 articles that you can't tell me how many and pulling 10:24:07</p> <p>4 things up on the internet? 10:24:10</p> <p>5 MR. COLLINS: Asked and answered. 10:24:11</p> <p>6 BY THE WITNESS: 10:24:12</p> <p>7 A. Correct. 10:24:13</p> <p>8 BY MR. BESSETTE: 10:24:13</p> <p>9 Q. Okay. Let me ask you to look at 10:24:29</p> <p>10 Exhibit 305, Mr. Frazier's report. 10:24:36</p> <p>11 MR. COLLINS: Off the record.</p> <p>12 MR. BESSETTE: Oh, is it time for a</p> <p>13 break?</p> <p>14 MR. COLLINS: No, no, I don't know.</p> <p>15 But you're reaching a point when you can stop, I</p> <p>16 presume? 10:24:42</p> <p>17 MR. BESSETTE: I can stop any time. 10:24:42</p> <p>18 THE WITNESS: If this is a good 10:24:44</p> <p>19 breaking point, it might be good. 10:24:46</p> <p>20 MR. BESSETTE: Sure, that's fine. 10:24:46</p> <p>21 (Break taken.) 10:24:46</p> <p>22 10:24:46</p> <p>23</p> <p>24</p>	<p>1 the title page of the international business 11:06:58</p> <p>2 transactions book from which I teach. And then the 11:07:01</p> <p>3 section which includes the materials on 11:07:04</p> <p>4 counterfeiting and gray marketing. 11:07:08</p> <p>5 Q. Okay. And that section I think is 11:07:11</p> <p>6 titled or numbered 9.2? 11:07:14</p> <p>7 A. Correct. 11:07:17</p> <p>8 Q. And is 9.3 a different section? 11:07:17</p> <p>9 A. Yes. 11:07:21</p> <p>10 Q. So just 9.2 is the portion of the 11:07:21</p> <p>11 course book that involves gray marketing? 11:07:27</p> <p>12 A. Correct. 11:07:33</p> <p>13 Q. And then there are supplemental 11:07:33</p> <p>14 materials as well, which you talked about earlier, 11:07:36</p> <p>15 which I understand do you pass out to your students 11:07:38</p> <p>16 as part of your class or is that just what you teach 11:07:42</p> <p>17 from? 11:07:45</p> <p>18 A. Yeah -- 11:07:45</p> <p>19 MR. COLLINS: Let him finish.</p> <p>20 THE WITNESS: Right, right, right.</p> <p>21 MR. COLLINS: Do you have the</p> <p>22 question?</p> <p>23 THE WITNESS: Yes, I do.</p> <p>24</p>
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<p>1 BY MR. BESSETTE: 11:04:43</p> <p>2 Q. Professor, what are some of the other 11:04:58</p> <p>3 topics in the international business transaction 11:05:00</p> <p>4 course book? 11:05:02</p> <p>5 MR. COLLINS: Document speaks for 11:05:03</p> <p>6 itself. 11:05:05</p> <p>7 Go ahead. 11:05:05</p> <p>8 BY MR. BESSETTE: 11:05:07</p> <p>9 Q. And I apologize. We are going to have 11:05:07</p> <p>10 it soon. We are having copies made. 11:05:10</p> <p>11 MR. COLLINS: Off the record. 11:05:15</p> <p>12 (Off the record 11:05:19</p> <p>13 discussion.) 11:06:32</p> <p>14 (Exhibit No. 306 was 11:06:32</p> <p>15 marked for 11:06:32</p> <p>16 identification.) 11:06:33</p> <p>17 BY MR. BESSETTE: 11:06:33</p> <p>18 Q. All right. Professor, I'm handing you 11:06:34</p> <p>19 what the court reporter has marked as Exhibit 306. 11:06:38</p> <p>20 And for the record, would you just identify that, 11:06:38</p> <p>21 including the Bates numbers, which are printed at 11:06:41</p> <p>22 the bottom, from just the first one to the last one? 11:06:44</p> <p>23 A. The Bates Numbers OCH 0137 to OCH 11:06:44</p> <p>24 0199. And it is the front page or the first sort of 11:06:53</p>	<p>1 BY THE WITNESS:</p> <p>2 A. The supplemental materials are 11:07:51</p> <p>3 materials that I assign similarly to how I assign 11:07:52</p> <p>4 the book. The students are expected to purchase the 11:07:57</p> <p>5 materials in advance of the class. 11:08:00</p> <p>6 BY MR. BESSETTE: 11:08:01</p> <p>7 Q. Okay. How many times a year do you 11:08:01</p> <p>8 teach the international business transactions class? 11:08:05</p> <p>9 A. I teach it -- so far it has been once 11:08:07</p> <p>10 a year. That may change. 11:08:09</p> <p>11 Q. So, so far between '03 and the present 11:08:11</p> <p>12 it has been once a year? 11:08:14</p> <p>13 A. Correct. 11:08:16</p> <p>14 Q. And that module 9.2 and whatever 11:08:16</p> <p>15 supplemental materials dealing with gray market, how 11:08:20</p> <p>16 big a portion of that class that runs a semester is 11:08:24</p> <p>17 that? 11:08:29</p> <p>18 A. Typically we devote between three and 11:08:29</p> <p>19 four class sessions to these issues. 11:08:32</p> <p>20 Q. And then how much preparation work do 11:08:34</p> <p>21 you do to be able to teach those three or four 11:08:42</p> <p>22 classes that deal with the subject matter we are 11:08:45</p> <p>23 talking about, gray marketing? 11:08:47</p> <p>24 A. How much in time? 11:08:49</p>

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<p>1 Q. Yes. 11:08:51</p> <p>2 A. I typically allot really between three 11:08:53</p> <p>3 and five hours preparation time for every hour that 11:08:57</p> <p>4 I spend in class. 11:09:01</p> <p>5 Q. And when you said three to four 11:09:02</p> <p>6 sessions, how many hours is a session? 11:09:04</p> <p>7 A. One hour. 11:09:06</p> <p>8 Q. So three to five hours preparation on 11:09:07</p> <p>9 average for one hour of class. And during a 11:09:13</p> <p>10 semester, you have three or four classes throughout 11:09:17</p> <p>11 the year that deal with gray marketing issues? 11:09:22</p> <p>12 A. Yeah, let me back up, actually. I was 11:09:25</p> <p>13 speaking about what I do now after having taught all 11:09:27</p> <p>14 of my classes more than once. In the first year 11:09:31</p> <p>15 that I was teaching, the amount of prep time that I 11:09:34</p> <p>16 devote has decreased, mostly because I have read the 11:09:37</p> <p>17 course materials before, the textbook materials 11:09:41</p> <p>18 before. And so the majority of my time now is spent 11:09:44</p> <p>19 reading outside materials. 11:09:47</p> <p>20 In the first year that I taught 11:09:50</p> <p>21 the class, I can remember that it was not unusual to 11:09:52</p> <p>22 spend something more like 10 hours per class session 11:09:58</p> <p>23 preparing for class. The second year that I taught, 11:10:01</p> <p>24 it was somewhat less than that. And the last time 11:10:04</p>	<p>1 We also talk about, again in the 11:11:14</p> <p>2 introductory part of the class, we talk about some 11:11:20</p> <p>3 of the difficulties that arise in international 11:11:23</p> <p>4 transactions, international business transactions 11:11:27</p> <p>5 typically, which involve issues of language, issues 11:11:31</p> <p>6 of trust, and issues of varying cultures. We talk 11:11:35</p> <p>7 about in addition to -- well, that's sort of the 11:11:38</p> <p>8 very beginning of the class. 11:11:39</p> <p>9 We also talk about different kinds 11:11:41</p> <p>10 of international business transactions, different 11:11:48</p> <p>11 categories of international business transactions. 11:11:51</p> <p>12 And so we move from -- 11:11:54</p> <p>13 (Off the record 11:11:54</p> <p>14 discussion.) 11:11:54</p> <p>15 BY THE WITNESS: 11:11:54</p> <p>16 A. So we move from international sale of 11:12:04</p> <p>17 goods to more complex levels of involvement. So we 11:12:05</p> <p>18 will talk about licensing, franchising, foreign 11:12:10</p> <p>19 direct investment and the kinds of partnerships that 11:12:16</p> <p>20 a U.S. entity might have with foreign entities in 11:12:23</p> <p>21 each of those kinds of transactions. That takes up 11:12:27</p> <p>22 a great bulk of the class. That was a very quick 11:12:30</p> <p>23 summary of a lot of the class. 11:12:36</p> <p>24 And then we also devote a section 11:12:37</p>
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<p>1 that I taught it, it was between three and 11:10:09</p> <p>2 five hours. 11:10:12</p> <p>3 Q. Okay. What are some of the other 11:10:12</p> <p>4 subject areas in the international business 11:10:13</p> <p>5 transactions class? So we have gray marketing we 11:10:15</p> <p>6 have talked about. What are some of the other big 11:10:18</p> <p>7 topics that are within the class? 11:10:19</p> <p>8 A. Okay. There are a number of topics, 11:10:21</p> <p>9 obviously. We start talking about the prevalence of 11:10:24</p> <p>10 international business transactions generally, the 11:10:27</p> <p>11 growth of international business transactions, sort 11:10:30</p> <p>12 of those wider phenomenons, contextualizing the 11:10:34</p> <p>13 reasons for the course and the importance of the 11:10:39</p> <p>14 course. 11:10:39</p> <p>15 We move on by talking about really 11:10:41</p> <p>16 mechanic transactions, how it is that an 11:10:44</p> <p>17 international business transaction may occur. So we 11:10:47</p> <p>18 talk about letters of credit, we talk about the 11:10:50</p> <p>19 relationships that the buyer and a seller would have 11:10:53</p> <p>20 with a bank, the relationships that they might have 11:10:55</p> <p>21 with each other, and how it is that individuals and 11:10:58</p> <p>22 companies engaged in international business 11:11:04</p> <p>23 transactions gain the confidence that is necessary 11:11:06</p> <p>24 to transact across borders. 11:11:11</p>	<p>1 of the class to what I like to call sort of the 11:12:40</p> <p>2 underbelly of international business transactions, 11:12:43</p> <p>3 and the gray marketing and counterfeit materials are 11:12:45</p> <p>4 sort of a nice transition into that material. I 11:12:48</p> <p>5 teach this material and then I teach about some of 11:12:53</p> <p>6 the environmental concerns and human rights concerns 11:12:55</p> <p>7 that are attendant to international business 11:12:58</p> <p>8 transactions. I talk about some of the materials or 11:13:01</p> <p>9 some of the efforts that have been made over the 11:13:04</p> <p>10 course of the last 35 years or so to alleviate some 11:13:08</p> <p>11 of those concerns, going all the way -- going into 11:13:13</p> <p>12 the history of it, as well as covering fairly recent 11:13:17</p> <p>13 material. 11:13:22</p> <p>14 After that section, we talk 11:13:23</p> <p>15 about -- after that section we talk about -- I am 11:13:25</p> <p>16 trying to picture my syllabus. The reason I am 11:13:31</p> <p>17 struggling with the last section is because that 11:13:36</p> <p>18 section I play with occasionally. And I often play 11:13:39</p> <p>19 with whether I want to change it. And the last time 11:13:42</p> <p>20 I taught it, I wasn't entirely happy with it. And 11:13:43</p> <p>21 there is a lot of material that I exclude that's in 11:13:47</p> <p>22 the textbook that I don't included in the class. 11:13:49</p> <p>23 Q. I think that's good. Unless you want 11:13:53</p> <p>24 to go on, I won't stop you. 11:13:53</p>

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1	A. No.	11:13:53	1	Q. Do you consider yourself an expert in	11:15:25
2	Q. Okay.	11:13:54	2	connection with the contracts that you teach?	11:15:29
3	MR. COLLINS: And we don't want you to	11:13:54	3	A. Absolutely.	11:15:30
4	answer more than he asks, so good answer.	11:13:57	4	Q. And again, that's based on your	11:15:31
5	THE WITNESS: Right.	11:14:00	5	reviewing the course book and whatever other	11:15:33
6	BY MR. BESSETTE:	11:14:00	6	materials that you use to prepare to teach law	11:15:38
7	Q. So let me just ask, on the licensing	11:14:01	7	students?	11:15:42
8	you talked about licensing as it relates to	11:14:04	8	A. Yes.	11:15:42
9	international business transactions, that's one	11:14:07	9	Q. So, Professor, just I want to be	11:15:42
10	section or component of the class. Do you consider	11:14:09	10	clear. Your expertise in gray marketing as it	11:16:33
11	yourself an expert in licensing in international	11:14:13	11	relates to this case in which you are proffering	11:16:37
12	business transactions?	11:14:16	12	yourself as an expert in, is based on your being a	11:16:40
13	A. Sure.	11:14:17	13	lawyer and teaching classes that contain gray	11:16:48
14	Q. And that's based on the same criteria	11:14:18	14	marketing subject areas and your reading the	11:16:51
15	that you've used before, you read materials, you	11:14:20	15	materials to prepare for the class that you teach.	11:16:54
16	presented in your class, so you think you are an	11:14:22	16	That's the basis for your expertise?	11:16:57
17	expert?	11:14:24	17	A. The materials that I teach, as well as	11:16:59
18	A. Yes.	11:14:24	18	outside materials, yes.	11:17:02
19	Q. Okay. Same thing with respect to	11:14:25	19	Q. Now, I think before the break I asked	11:17:02
20	franchising in connection with the international	11:14:27	20	you to take a look at Paragraph 37 of Mr. Frazier's	11:17:10
21	business transactions. Because it is in the class	11:14:30	21	report -- I'm sorry, it may be professor as well.	11:17:16
22	and you teach it, do you feel that you are an expert	11:14:32	22	But Exhibit 305, Paragraph 37, it is on page 12.	11:17:16
23	in franchising in connection with international	11:14:36	23	Professor Frazier writes that -- I think it's the	11:17:31
24	business transactions?	11:14:39	24	second sentence -- that consumers shopping at Costco	11:17:38
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1	A. Yes.	11:14:40	1	did not particularly care about pre- and post-sales	11:17:41
2	Q. Same question with respect to foreign	11:14:41	2	service availability at specialty and pro shops, and	11:17:45
3	direct investment?	11:14:44	3	sites, the Coughlan piece down there. Do you agree	11:17:51
4	A. Yes. And I would say there are areas	11:14:44	4	with that statement?	11:17:53
5	in which I feel more and less comfortable. For	11:14:46	5	MR. COLLINS: Excuse me. You mean	11:17:55
6	various reasons, I may have other pressing issues	11:14:50	6	that one statement in isolation apart from the	11:17:55
7	that are going on during the time that I am	11:14:52	7	paragraph and apart from the section?	11:18:00
8	preparing for a class and may have read less or more	11:14:55	8	MR. BESSETTE: Yes.	11:18:02
9	outside materials as a result.	11:15:00	9	BY MR. BESSETTE:	11:18:02
10	Q. Is there any area that you can tell me	11:15:02	10	Q. Do you agree with that statement?	11:18:03
11	now in connection why the international business	11:15:06	11	MR. COLLINS: I will caution you, go	11:18:04
12	transactions and the course book that you teach from	11:15:08	12	ahead and answer, but if you feel you need to read	11:18:06
13	and whatever other materials you read to prepare,	11:15:08	13	the paragraph and read the section, you read them.	11:18:11
14	that you do not consider yourself an expert in?	11:15:17	14	THE WITNESS: Uh-huh. I'll be right	11:18:11
15	MR. COLLINS: In connection with this	11:15:17	15	with you.	11:18:13
16	particular course?	11:15:18	16	BY THE WITNESS:	11:18:13
17	MR. BESSETTE: Yes. I thought I made	11:15:18	17	A. No, I don't.	11:18:16
18	that clear.	11:15:19	18	BY MR. BESSETTE:	11:18:17
19	BY THE WITNESS:	11:15:19	19	Q. Why not?	11:18:18
20	A. In connection with the course, no.	11:15:20	20	A. I think that what he says there is	11:18:18
21	BY MR. BESSETTE:	11:15:21	21	essentially that nobody shopping -- what I read in	11:18:23
22	Q. You also teach I think it is a	11:15:21	22	that sentence is that nobody shopping at Costco	11:18:26
23	contracts class, right?	11:15:23	23	would care about pre and post sales service. And I	11:18:30
24	A. Correct.	11:15:24	24	think that's a stretch. I could imagine -- well, I	11:18:34

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<p>1 will stop there. 11:18:39</p> <p>2 Q. Are you familiar with the article or 11:18:40</p> <p>3 publication that he cites there, which the full cite 11:18:42</p> <p>4 I think is in Footnote 1 on page 3? 11:18:45</p> <p>5 A. That is the one article that I didn't 11:18:48</p> <p>6 see in the materials that were produced. 11:18:51</p> <p>7 Q. Are you familiar with it, though? 11:18:53</p> <p>8 A. With that article, no. 11:18:56</p> <p>9 Q. Next paragraph. Professor Frazier 11:18:57</p> <p>10 writes that there is no evidence that Adams Golf 11:19:09</p> <p>11 brand name lost status, noting that consumers who 11:19:13</p> <p>12 acquire prestigious brand at a good price are often 11:19:18</p> <p>13 very satisfied with their purchase. Do you agree 11:19:25</p> <p>14 with that statement?</p> <p>15 A. Do you want me to read the paragraph?</p> <p>16 Q. Sure. In all of these, go ahead and</p> <p>17 read the paragraph.</p> <p>18 A. Yeah.</p> <p>19 MR. COLLINS: All of these meaning</p> <p>20 Section C on page 12?</p> <p>21 MR. BESSETTE: No.</p> <p>22 BY MR. BESSETTE:</p> <p>23 Q. All of these meaning my question, if 11:19:35</p> <p>24 it's in a paragraph, feel free to read the paragraph 11:19:36</p>	<p>1 asking her to tell you the sections of her report or 11:21:00</p> <p>2 are you asking her to answer -- 11:21:00</p> <p>3 MR. BESSETTE: Can you read the 11:21:00</p> <p>4 question back, please? 11:21:00</p> <p>5 (Record read.) 11:21:16</p> <p>6 BY THE WITNESS: 11:21:16</p> <p>7 A. There was, in preparation for my 11:21:16</p> <p>8 reports, I saw documents that I don't remember now 11:21:19</p> <p>9 whether they actually made it into my report or not. 11:21:25</p> <p>10 But, for example, there was, I believe it was Edwin 11:21:28</p> <p>11 Watts who made a statement about gray marketing 11:21:33</p> <p>12 lowers the value of the product, and if you lose 11:21:40</p> <p>13 brand image, you lose everything. The gray 11:21:43</p> <p>14 marketing was occurring at Adams and was effecting 11:21:47</p> <p>15 its brand image. If you lose brand image, you lose 11:21:52</p> <p>16 everything. 11:21:57</p> <p>17 BY MR. BESSETTE: 11:21:57</p> <p>18 Q. So your understanding is that Adams 11:21:57</p> <p>19 Golf lost brand image because Mr. Watts talked about 11:22:01</p> <p>20 gray marketing generally, and since Adams Golf was 11:22:05</p> <p>21 experiencing gray marketing it must have lost brand 11:22:09</p> <p>22 status? Do I understand that right? 11:22:13</p> <p>23 MR. COLLINS: Mischaracterized the 11:22:13</p> <p>24 testimony. 11:22:13</p>
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<p>1 or whatever you feel is necessary. 11:19:42</p> <p>2 A. Now, I'm sorry, which is the statement 11:20:06</p> <p>3 you're asking me to agree with or disagree with? 11:20:11</p> <p>4 Q. It's the one where Professor Frazier 11:20:11</p> <p>5 writes that there is no evidence that Adams Golf's 11:20:12</p> <p>6 brand name lost status. 11:20:15</p> <p>7 A. I think that's a mischaracterization 11:20:17</p> <p>8 of what that paragraph says. 11:20:19</p> <p>9 Q. Well, I will read it into the record. 11:20:22</p> <p>10 "Ms. Ochoa provides no evidence that Adams Golf's 11:20:24</p> <p>11 brand name lost status with consumers as a result of 11:20:24</p> <p>12 the low magnitude of gray market sales experienced 11:20:32</p> <p>13 by Adams Golf." 11:20:32</p> <p>14 Do you agree with that sentence? 11:20:34</p> <p>15 A. No. 11:20:35</p> <p>16 Q. Why not? 11:20:36</p> <p>17 A. I think there is some evidence that 11:20:36</p> <p>18 the brand name was losing status. And I also 11:20:38</p> <p>19 disagree with the characterization of the magnitude 11:20:42</p> <p>20 of gray market sales experience by Adams as low. 11:20:46</p> <p>21 Q. All right. What evidence do you cite 11:20:52</p> <p>22 where -- that indicates to you that the Adams Golf 11:20:54</p> <p>23 brand name lost status? 11:20:57</p> <p>24 MR. COLLINS: And by cite, are you 11:20:58</p>	<p>1 Go ahead. 11:22:13</p> <p>2 BY THE WITNESS: 11:22:15</p> <p>3 A. Yeah. I don't think Edwin Watts' 11:22:15</p> <p>4 testimony is what caused Adams Golf's brand name to 11:22:19</p> <p>5 lose value. 11:22:19</p> <p>6 BY MR. BESSETTE: 11:22:19</p> <p>7 Q. And my question is, what is your 11:22:19</p> <p>8 evidence that the brand name did lose status? 11:22:20</p> <p>9 MR. COLLINS: And what you're asking 11:22:23</p> <p>10 her to do -- 11:22:24</p> <p>11 MR. BESSETTE: Todd, it is pretty 11:22:25</p> <p>12 plain. 11:22:27</p> <p>13 BY MR. BESSETTE: 11:22:27</p> <p>14 Q. What is your evidence, Professor, that 11:22:27</p> <p>15 Adams Golf's brand name lost status? 11:22:29</p> <p>16 MR. COLLINS: Excuse me. I guess what 11:22:32</p> <p>17 you are asking her to do is to list every piece of 11:22:33</p> <p>18 evidence. Is that it? Even if it is already in her 11:22:36</p> <p>19 report? 11:22:41</p> <p>20 BY MR. BESSETTE: 11:22:41</p> <p>21 Q. Point to it, list it, summarize it, 11:22:41</p> <p>22 but tell me what your evidence is. 11:22:45</p> <p>23 A. Okay. All right. So Edwin Watts is 11:22:45</p> <p>24 an example. In addition, there is a memo written by 11:22:48</p>

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<p>1 Barney Adams on October, I believe 13th, in which he 11:22:52</p> <p>2 says that he is forecasting Q4 sales to decrease 20 11:22:58</p> <p>3 to 25 percent based on surveys from customers who 11:23:04</p> <p>4 refused to buy. That means evidence that customers 11:23:08</p> <p>5 refused to buy Adams Golf clubs, and as a result -- 11:23:14</p> <p>6 as he stated as a result of gray marketing. 11:23:17</p> <p>7 Q. I think that misstates what he said, 11:23:20</p> <p>8 and we will go into that. 11:23:23</p> <p>9 That's in October. When did Adams 11:23:24</p> <p>10 Golf lose brand status, in your opinion? 11:23:28</p> <p>11 A. I believe that Adams Golf started to 11:23:30</p> <p>12 lose brand status in a sort of escalating fashion, 11:23:31</p> <p>13 together with the trend of the gray marketing 11:23:38</p> <p>14 problems that Adams was experiencing. Certainly by 11:23:40</p> <p>15 the time that the market generally was aware that 11:23:42</p> <p>16 gray marketing was occurring, there was some 11:23:45</p> <p>17 significant impact to Adam's brand name. 11:23:49</p> <p>18 Q. And what is your evidence of that? 11:23:52</p> <p>19 A. The declining sales. 11:23:54</p> <p>20 Q. And when did sales start to decline? 11:23:56</p> <p>21 A. Sales started to decline soon after 11:24:01</p> <p>22 the IPO. 11:24:05</p> <p>23 Q. So in your view, declining sales is an 11:24:06</p> <p>24 indicator of a losing of brand status for Adams 11:24:09</p>	<p>1 know? Did you do any research? 11:24:45</p> <p>2 MR. COLLINS: What causes are apart 11:24:46</p> <p>3 from gray marketing are outside the scope. 11:24:48</p> <p>4 BY MR. BESSETTE: 11:24:51</p> <p>5 Q. Well, look. You cited declining sales 11:24:52</p> <p>6 as evidence of Adams Golf's losing brand status. Do 11:24:56</p> <p>7 I understand that correctly? 11:25:00</p> <p>8 A. Yes. 11:25:02</p> <p>9 Q. Okay. What did you do to analyze the 11:25:02</p> <p>10 cause of declining sales? 11:25:04</p> <p>11 A. I analyzed the gray market problem 11:25:05</p> <p>12 that Adams was experiencing. 11:25:08</p> <p>13 Q. Let me ask you, what did you do to 11:25:10</p> <p>14 analyze the decline in sales to determine that 11:25:13</p> <p>15 losing brand status was one of the causes for the 11:25:20</p> <p>16 declining sales? 11:25:24</p> <p>17 A. Okay. I looked at -- obviously I 11:25:25</p> <p>18 looked at literature on gray marketing, the causes 11:25:28</p> <p>19 and effects of gray marketing. The effects are well 11:25:30</p> <p>20 laid out in a number of documents that I cited, and 11:25:34</p> <p>21 others. Those effects can be, among those effects, 11:25:36</p> <p>22 one of the most prevalent and worrisome effects, can 11:25:41</p> <p>23 be declining sales, as a result of declining brand 11:25:45</p> <p>24 image. 11:25:45</p>
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<p>1 Golf? 11:24:13</p> <p>2 A. That's one of the explanations, yes. 11:24:13</p> <p>3 Q. I know it can be. Is it in your 11:24:15</p> <p>4 opinion evidence of losing brand status? 11:24:18</p> <p>5 A. For Adams? 11:24:20</p> <p>6 Q. Yes. 11:24:21</p> <p>7 A. Yes. 11:24:22</p> <p>8 Q. Why? 11:24:22</p> <p>9 A. I am sorry? 11:24:23</p> <p>10 Q. Why? 11:24:23</p> <p>11 MR. COLLINS: Asked and answered. 11:24:24</p> <p>12 Go ahead. 11:24:25</p> <p>13 BY MR. BESSETTE: 11:24:26</p> <p>14 Q. In other words, how do you quantify 11:24:26</p> <p>15 the declining sales -- let me strike that. 11:24:28</p> <p>16 The declining sales, did it have 11:24:30</p> <p>17 any other reason besides Adams Golf losing brand 11:24:33</p> <p>18 status? 11:24:38</p> <p>19 A. Could there be another explanations, 11:24:38</p> <p>20 is that what you're asking? 11:24:40</p> <p>21 Q. Yeah. Are there other causes for the 11:24:40</p> <p>22 declining sales? 11:24:42</p> <p>23 A. There could be. 11:24:42</p> <p>24 Q. Well, do you have any opinion? Do you 11:24:43</p>	<p>1 It is well evidenced, well 11:25:48</p> <p>2 documented that gray marketing can have an impact, a 11:25:49</p> <p>3 significant impact on brand image, and that 11:25:52</p> <p>4 devaluation of brand image can have a significant 11:25:56</p> <p>5 impact on sales. That information, in my background 11:25:59</p> <p>6 and in my experience or in my expertise, informed my 11:26:05</p> <p>7 reading of the problems that Adams experienced and 11:26:09</p> <p>8 the effects that Adams experienced as well. 11:26:15</p> <p>9 Q. So because you read academic 11:26:18</p> <p>10 literature that indicates that one of the results of 11:26:21</p> <p>11 gray marketing could be a loss in brand status, 11:26:24</p> <p>12 which could be reflected in declining sales, because 11:26:28</p> <p>13 you saw declining sales at Adams Golf, you are 11:26:30</p> <p>14 concluding that it is, in part, a result of the loss 11:26:35</p> <p>15 of brand status. Do I understand that correctly? 11:26:39</p> <p>16 MR. COLLINS: Mischaracterizing the 11:26:42</p> <p>17 testimony. 11:26:44</p> <p>18 MR. BESSETTE: Go ahead and read it</p> <p>19 back, please.</p> <p>20 THE WITNESS: The question you</p> <p>21 asked --</p> <p>22 MR. COLLINS: That's fine. Let him</p> <p>23 read it back.</p> <p>24 THE WITNESS: Sure.</p>

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<p>1 (Record read.) 11:27:09</p> <p>2 MR. COLLINS: Now, Paul asked crisp 11:27:09</p> <p>3 questions. That was not necessarily the crispest. 11:27:12</p> <p>4 So make sure you understand the question before you 11:27:17</p> <p>5 answer. And Paul can say it again or we could have 11:27:19</p> <p>6 it read back again. If you understand it, go ahead 11:27:23</p> <p>7 and answer. 11:27:24</p> <p>8 THE WITNESS: I think I understand the 11:27:24</p> <p>9 question. 11:27:27</p> <p>10 BY THE WITNESS: 11:27:27</p> <p>11 A. Though my answer -- my answer takes 11:27:28</p> <p>12 issue with various parts of what you said. And I 11:27:32</p> <p>13 can either take issue with those in turn or you 11:27:37</p> <p>14 could break the question into a couple of parts. 11:27:40</p> <p>15 BY MR. BESSETTE: 11:27:42</p> <p>16 Q. Go ahead and answer it however you see 11:27:42</p> <p>17 fit. 11:27:45</p> <p>18 (Off the record 11:27:45</p> <p>19 discussion.) 11:28:17</p> <p>20 MR. COLLINS: Are you okay or do you 11:28:17</p> <p>21 need it read back again? 11:28:19</p> <p>22 MR. BESSETTE: She already said, Todd, 11:28:19</p> <p>23 that she understood. 11:28:19</p> <p>24 MR. COLLINS: No. We just had an 11:28:21</p>	<p>1 that the reason that they were experiencing 11:29:21</p> <p>2 declining sales was gray marketing. However, Adams 11:29:24</p> <p>3 Golf was experiencing a gray market problem, and 11:29:28</p> <p>4 that very much informed my analysis. 11:29:30</p> <p>5 Q. Again, I think the answer was 11:29:33</p> <p>6 confusing. Let me try to parse a couple other 11:29:34</p> <p>7 question. 11:29:34</p> <p>8 Did you undertake any analysis of 11:29:36</p> <p>9 the causes for Adams Golf's decline in sales in 11:29:40</p> <p>10 1998, the second half? 11:29:43</p> <p>11 A. Can you ask that again? 11:29:45</p> <p>12 Q. Did you undertake any analysis to 11:29:47</p> <p>13 determine what caused Adams Golf's decline in sales 11:29:51</p> <p>14 in the second half of 1998? 11:29:57</p> <p>15 A. Yes. 11:29:58</p> <p>16 Q. Tell me what analysis you undertook. 11:29:59</p> <p>17 A. I studied its gray market problem and 11:30:02</p> <p>18 made a determination of whether or not its gray 11:30:06</p> <p>19 market problem caused some of that decline. 11:30:08</p> <p>20 Q. What analysis did you undertake in 11:30:10</p> <p>21 particular? 11:30:13</p> <p>22 A. I applied the academic literature on 11:30:13</p> <p>23 gray marketing studies, the business strategies that 11:30:18</p> <p>24 Adams Golf employed, I superimposed that on the 11:30:22</p>
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<p>1 interruption, Paul. She is entitled to hear the 11:28:23</p> <p>2 question again, which was confusing, if she wants 11:28:25</p> <p>3 to.</p> <p>4 MR. BESSETTE: Well, let's just --</p> <p>5 MR. COLLINS: If you're read, go ahead</p> <p>6 and answer.</p> <p>7 BY MR. BESSETTE:</p> <p>8 Q. Do you want it again?</p> <p>9 A. I'm okay. I'm fine.</p> <p>10 The first part of your question 11:28:30</p> <p>11 implied, I read -- I interpreted in what you said 11:28:31</p> <p>12 that academic literature is divorced from real life 11:28:37</p> <p>13 or reality. The academic literature that deals 11:28:41</p> <p>14 specifically with the effects of gray marketing on 11:28:45</p> <p>15 both on brand image and profitability or sales as a 11:28:48</p> <p>16 result is, in fact, empirically based. And so it is 11:28:52</p> <p>17 a summary and extrapolation of what happens in that 11:28:57</p> <p>18 rear world. 11:29:01</p> <p>19 In addition when -- so yes, I 11:29:02</p> <p>20 relied on that academic literature when I was 11:29:03</p> <p>21 studying the problem that Adams Golf had faced. And 11:29:08</p> <p>22 I want to make clear that had Adams Golf not had a 11:29:11</p> <p>23 gray market problem when Adams Golf was experiencing 11:29:15</p> <p>24 declining sales, I would have no reason to believe 11:29:18</p>	<p>1 academic literature on the causes of gray marketing, 11:30:25</p> <p>2 the various invitations that companies can make to 11:30:28</p> <p>3 gray marketers, and then saw that, in fact, Adams 11:30:33</p> <p>4 Golf had experienced a gray market problem and made 11:30:35</p> <p>5 a determination based on those factors. 11:30:35</p> <p>6 Q. And that's what led you to your 11:30:37</p> <p>7 conclusion that the decline in sales was caused in 11:30:40</p> <p>8 part by gray marketing? 11:30:43</p> <p>9 A. Yes. 11:30:45</p> <p>10 Q. Nothing else, just reading the 11:30:45</p> <p>11 academic literature and superimposing that on to the 11:30:47</p> <p>12 company's decline in sales? 11:30:52</p> <p>13 MR. COLLINS: Mischaracterize the 11:30:54</p> <p>14 testimony. 11:30:56</p> <p>15 BY THE WITNESS: 11:30:56</p> <p>16 A. On to Adams Golf's business model, 11:30:56</p> <p>17 it's strategies, and yes, the fact that it was 11:31:00</p> <p>18 actually experiencing a gray market problem and was 11:31:08</p> <p>19 experiencing a decline in sales. 11:31:10</p> <p>20 BY MR. BESSETTE: 11:31:13</p> <p>21 Q. So okay. In your analysis, did you 11:31:15</p> <p>22 attribute any other causes to Adams Golf's decline 11:31:17</p> <p>23 in sales in the second half of 1998 other than gray 11:31:20</p> <p>24 marketing? 11:31:23</p>

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<p>1 MR. COLLINS: Outside the scope. 11:31:24</p> <p>2 Go ahead. 11:31:26</p> <p>3 BY THE WITNESS: 11:31:26</p> <p>4 A. In my analysis, no. I was looking at 11:31:26</p> <p>5 the gray market problem. 11:31:28</p> <p>6 BY MR. BESSETTE: 11:31:30</p> <p>7 Q. Did you quantify what percent of the 11:31:30</p> <p>8 decline in sales in the second half of 1998 was 11:31:33</p> <p>9 caused, in your opinion, by gray marketing? 11:31:37</p> <p>10 A. I did not. 11:31:39</p> <p>11 Q. So you don't have any opinion on that 11:31:40</p> <p>12 as you sit here today? 11:31:43</p> <p>13 A. Not in a quantifiable, numerical 11:31:44</p> <p>14 sense, no. 11:31:46</p> <p>15 Q. In any sense? 11:31:47</p> <p>16 A. Yes. 11:31:48</p> <p>17 Q. What is your opinion? 11:31:49</p> <p>18 A. Significant. 11:31:50</p> <p>19 Q. What does that mean? 11:31:51</p> <p>20 A. It means enough that it would have 11:31:52</p> <p>21 been important to Adams Golf and to investors. 11:31:54</p> <p>22 Q. When the company experienced gray 11:31:56</p> <p>23 marketing -- I'm sorry. 11:31:56</p> <p>24 When the company experienced 11:32:00</p>	<p>1 You gave me the response. 11:32:52</p> <p>2 A. That gray marketing was significant to 11:32:54</p> <p>3 potential investors to the company and investors. I 11:32:56</p> <p>4 don't remember exactly what I said, but... 11:32:59</p> <p>5 Q. I believe you were talking about gray 11:33:01</p> <p>6 marketing. 11:33:02</p> <p>7 A. Yes, I was referring to gray 11:33:03</p> <p>8 marketing. 11:33:04</p> <p>9 Q. Now, when in your view, was it 11:33:05</p> <p>10 significant to investors? 11:33:08</p> <p>11 A. In my view, gray marketing became 11:33:09</p> <p>12 significant to investors in thinking back of the 11:33:11</p> <p>13 history of Adams Golf's gray market problem, there 11:33:14</p> <p>14 was the initial shipment or the initial appearance 11:33:18</p> <p>15 of Adams Golf clubs in Costcos in Canada. And then 11:33:21</p> <p>16 there was a belief that that shipment was an 11:33:27</p> <p>17 isolated incident. And that once those clubs had 11:33:31</p> <p>18 been sold through, there would no longer be a 11:33:34</p> <p>19 problem. 11:33:37</p> <p>20 That proved not to be the case. 11:33:38</p> <p>21 In fact, soon thereafter there were additional 11:33:40</p> <p>22 shipments to Costcos not just in Canada, but 11:33:43</p> <p>23 appearing all over Canada and every region of the 11:33:46</p> <p>24 United States. At that point, I think it became 11:33:50</p>
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<p>1 decline in sales -- Strike that. 11:32:02</p> <p>2 When was it important? When was 11:32:04</p> <p>3 it significant to investors, as you just mentioned? 11:32:06</p> <p>4 MR. COLLINS: What is the "it"? 11:32:13</p> <p>5 MR. BESSETTE: Would you read her last 11:32:13</p> <p>6 answer, please. 11:32:13</p> <p>7 (Record read.) 11:32:22</p> <p>8 MR. COLLINS: Vague and ambiguous, 11:32:22</p> <p>9 hopelessly vague at this point. 11:32:25</p> <p>10 MR. BESSETTE: That's her answer. 11:32:28</p> <p>11 MR. COLLINS: Right. Because -- make 11:32:28</p> <p>12 it a more crisp question, please, because the "it" 11:32:32</p> <p>13 in context is very unclear at this point. 11:32:35</p> <p>14 BY MR. BESSETTE: 11:32:38</p> <p>15 Q. Do you understand my question, 11:32:39</p> <p>16 Professor? 11:32:40</p> <p>17 A. Can you please restate it? 11:32:40</p> <p>18 Q. What did you mean in your last 11:32:43</p> <p>19 response that it was significant to potential 11:32:45</p> <p>20 investors? 11:32:49</p> <p>21 MR. COLLINS: Vague and ambiguous. 11:32:50</p> <p>22 Go ahead. 11:32:52</p> <p>23 BY MR. BESSETTE: 11:32:52</p> <p>24 Q. I just want to know what you meant. 11:32:52</p>	<p>1 significantly important to investors. 11:33:54</p> <p>2 Q. Are you familiar with the common 11:33:55</p> <p>3 marketing practice of segmenting? 11:33:57</p> <p>4 A. If you can tell me a little bit more 11:34:00</p> <p>5 about what you mean by segmenting I can answer that 11:34:04</p> <p>6 question. 11:34:08</p> <p>7 Q. Well, are you able to sit here and 11:34:08</p> <p>8 tell me what the major segments in the market for 11:34:10</p> <p>9 golf clubs would be? 11:34:12</p> <p>10 A. I'm not sure if you mean geographical 11:34:13</p> <p>11 segments or if you mean consumer segments. 11:34:16</p> <p>12 Q. Consumers in the industry, so consumer 11:34:18</p> <p>13 segments. 11:34:22</p> <p>14 A. Yes. 11:34:23</p> <p>15 Q. What are the consumer segments that 11:34:23</p> <p>16 you are aware of for golf clubs? 11:34:27</p> <p>17 A. In reading the Harvard business school 11:34:29</p> <p>18 document that was produced in connection with 11:34:35</p> <p>19 Mr. Frazier's report, in it I learned -- I saw that 11:34:37</p> <p>20 characterized in that report, and I will just use 11:34:44</p> <p>21 the same terminology, as avid golf golfers, I think 11:34:47</p> <p>22 it was beginning -- no. Advanced golfers, maybe it 11:34:52</p> <p>23 was average golfers and beginning golfers, I think 11:34:56</p> <p>24 is the terminology they used. 11:35:00</p>

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<p>1 Q. And prior to reading that, you had no 11:35:03</p> <p>2 understanding or did you, of consumer segmenting in 11:35:06</p> <p>3 the golf club market? 11:35:09</p> <p>4 MR. COLLINS: As she just testified, 11:35:13</p> <p>5 is that what you mean? 11:35:13</p> <p>6 MR. BESSETTE: No. 11:35:13</p> <p>7 MR. COLLINS: In connection with -- 11:35:14</p> <p>8 BY MR. BESSETTE: 11:35:14</p> <p>9 Q. Prior to reading the Harvard business 11:35:16</p> <p>10 school study, did you have any knowledge of the 11:35:18</p> <p>11 consumer segmenting in the golf club market? 11:35:18</p> <p>12 MR. COLLINS: Vague and ambiguous. 11:35:18</p> <p>13 BY THE WITNESS: 11:35:21</p> <p>14 A. The information that I would have in 11:35:21</p> <p>15 that respect would have come from reading documents 11:35:23</p> <p>16 in connection with this litigation. 11:35:26</p> <p>17 BY MR. BESSETTE: 11:35:28</p> <p>18 Q. Okay. Prior to this litigation, did 11:35:28</p> <p>19 you have any knowledge of consumer segmenting in the 11:35:31</p> <p>20 golf club market? 11:35:34</p> <p>21 MR. COLLINS: Vague and ambiguous. 11:35:36</p> <p>22 BY THE WITNESS: 11:35:36</p> <p>23 A. I had what I would characterize as a 11:35:38</p> <p>24 lay understanding of that. 11:35:39</p>	<p>1 high profit margin. And those would indicate that 11:36:32</p> <p>2 Adams Golf was trying to target the high end of the 11:36:35</p> <p>3 market. 11:36:40</p> <p>4 BY MR. BESSETTE: 11:36:40</p> <p>5 Q. Okay. And that high end of the 11:36:40</p> <p>6 market, where would this segment likely shop for the 11:36:42</p> <p>7 golf clubs? 11:36:46</p> <p>8 A. In the places that Adams Golf was 11:36:47</p> <p>9 hoping they would shop. 11:36:51</p> <p>10 Q. Pro shops, specialty stores, that sort 11:36:52</p> <p>11 of thing? 11:36:55</p> <p>12 A. Yes. 11:36:55</p> <p>13 Q. Which of the consumer segments is more 11:36:55</p> <p>14 likely to shop at Costco or other discount 11:36:58</p> <p>15 retailers? 11:37:01</p> <p>16 MR. COLLINS: Which of the two 11:37:01</p> <p>17 segments you referred to in the article a moment 11:37:02</p> <p>18 ago, is that what you mean? 11:37:05</p> <p>19 BY MR. BESSETTE: 11:37:05</p> <p>20 Q. Which of the customer segments that we 11:37:06</p> <p>21 are referring to would be most likely to shop in 11:37:08</p> <p>22 Costco or other discount retailers? 11:37:11</p> <p>23 A. That's impossible to say. 11:37:15</p> <p>24 Q. Why? 11:37:16</p>
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<p>1 BY MR. BESSETTE: 11:35:40</p> <p>2 Q. Certainly not an expert understanding? 11:35:41</p> <p>3 A. No. 11:35:42</p> <p>4 Q. And now that you have read litigation 11:35:42</p> <p>5 and read the Harvard business school study, do you 11:35:47</p> <p>6 have any view as to what customer segment Adams Golf 11:35:50</p> <p>7 was targeting with the Tight Lies? 11:35:55</p> <p>8 MR. COLLINS: Vague and ambiguous. 11:35:57</p> <p>9 BY THE WITNESS: 11:36:00</p> <p>10 A. Yeah. I'm not sure exactly what you 11:36:01</p> <p>11 mean by the question. 11:36:01</p> <p>12 BY MR. BESSETTE: 11:36:02</p> <p>13 Q. What don't you understand about it? 11:36:02</p> <p>14 A. I'm not sure -- well, if you can 11:36:02</p> <p>15 actually just restate the question that will be 11:36:07</p> <p>16 helpful. 11:36:07</p> <p>17 Q. Can you say which of the customer 11:36:09</p> <p>18 segments listed in the Harvard business school study 11:36:11</p> <p>19 that Adams Golf was targeting? 11:36:15</p> <p>20 MR. COLLINS: Foundation. 11:36:19</p> <p>21 BY THE WITNESS: 11:36:20</p> <p>22 A. It appears to me from the documents 11:36:20</p> <p>23 that I've read that Adams Golf wanted to maintain 11:36:22</p> <p>24 high prestige brand, wanted to be able to maintain a 11:36:27</p>	<p>1 A. I think there is not necessarily a 11:37:17</p> <p>2 direct correlation between avid golfers and lack of 11:37:19</p> <p>3 price sensitivity. 11:37:24</p> <p>4 Q. What is that based on? 11:37:25</p> <p>5 A. Based on living in the world. People 11:37:27</p> <p>6 like to find a bargain. So even though a person may 11:37:29</p> <p>7 be an avid golfer, they may not have so much 11:37:32</p> <p>8 disposable income that they wouldn't seek the deal. 11:37:36</p> <p>9 Q. So you don't think it is more likely 11:37:36</p> <p>10 that a certain consumer segment would shop at Costco 11:37:39</p> <p>11 in terms of the golf market? 11:37:45</p> <p>12 A. No. 11:37:47</p> <p>13 Q. How likely is it in your view that a 11:37:47</p> <p>14 beginning golfer would go to a pro shop and pay full 11:38:02</p> <p>15 price for a club? 11:38:06</p> <p>16 A. That they would pay full price for a 11:38:07</p> <p>17 club? 11:38:10</p> <p>18 Q. How likely is a customer in the 11:38:10</p> <p>19 beginning golfer segment to go to a golf shop and 11:38:13</p> <p>20 pay full price for a club? 11:38:17</p> <p>21 A. I see two parts in your question, and 11:38:19</p> <p>22 I will answer them both. I think it is likely that 11:38:21</p> <p>23 a beginning golfer would like to find as much 11:38:24</p> <p>24 information as they could about the products that 11:38:28</p>

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<p>1 they were about to buy, specifically because they 11:38:31</p> <p>2 don't have the experience that they might need to 11:38:33</p> <p>3 make a good decision about what kind of golf clubs 11:38:36</p> <p>4 to buy, and what kind of golf clubs will help them 11:38:39</p> <p>5 become better golfers. 11:38:44</p> <p>6 That information is obtainable in 11:38:46</p> <p>7 a variety of locations, one of those locations being 11:38:47</p> <p>8 a high end or sort of service-orientated retail 11:38:51</p> <p>9 shop. However, obtaining that information in a shop 11:38:56</p> <p>10 like that does not preclude a beginning golfer from 11:38:59</p> <p>11 buying clubs on his way home from obtaining that 11:39:01</p> <p>12 information at a Costco. 11:39:06</p> <p>13 Q. Okay. Now, Exhibit 305, Professor 11:39:09</p> <p>14 Frazier's report, Paragraph 16. Professor Frazier 11:39:12</p> <p>15 writes that the benefits of gray markets can be 11:39:23</p> <p>16 long-term in nature. You can read the whole 11:39:26</p> <p>17 paragraph, but essentially that's the thrust. Do 11:39:29</p> <p>18 you agree with that contention? 11:39:34</p> <p>19 MR. COLLINS: Please answer, but first 11:39:35</p> <p>20 read the whole paragraph to yourself. 11:39:36</p> <p>21 BY THE WITNESS: 11:39:46</p> <p>22 A. Yeah.</p> <p>23 MR. COLLINS: Excuse me. Please read</p> <p>24 the whole paragraph to yourself.</p>	<p>1 Q. Why not? 11:40:58</p> <p>2 A. I think that that is -- that's a 11:40:59</p> <p>3 complicated assertion. It may be a validation that 11:41:03</p> <p>4 the brand has gained popularity, however, it doesn't 11:41:07</p> <p>5 account for the effects that the gray marketing can 11:41:12</p> <p>6 have on the desirability of a brand in other 11:41:15</p> <p>7 sectors. 11:41:18</p> <p>8 Q. Let me ask you -- 11:41:19</p> <p>9 MR. COLLINS: Did you finish? 11:41:21</p> <p>10 BY MR. BESSETTE: 11:41:21</p> <p>11 Q. Oh, I'm sorry. I thought you did. I 11:41:23</p> <p>12 apologize. 11:41:23</p> <p>13 A. Like I said, it doesn't account for 11:41:31</p> <p>14 the effects that gray marketing can have in other 11:41:34</p> <p>15 sectors, the ramifications, the echo effects that it 11:41:37</p> <p>16 can have in other sectors of the golf equipment 11:41:41</p> <p>17 purchasing population. 11:41:45</p> <p>18 Q. What is that last part? Can you say 11:41:49</p> <p>19 that again? 11:41:51</p> <p>20 A. Yeah. That this paragraph or this 11:41:52</p> <p>21 bullet point doesn't account for the effects that 11:41:54</p> <p>22 gray marketing can have on the image of the brand 11:41:57</p> <p>23 and the effects that that can have on the buying 11:42:01</p> <p>24 practices of other sectors of the golf equipment 11:42:06</p>
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<p>1 THE WITNESS: Yes. No, I was saying</p> <p>2 yes that I will.</p> <p>3 MR. COLLINS: Thank you.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Which part are you asking me to 11:40:13</p> <p>6 comment on? 11:40:14</p> <p>7 BY MR. BESSETTE: 11:40:15</p> <p>8 Q. First, that gray market has long-term 11:40:16</p> <p>9 benefits. 11:40:18</p> <p>10 A. What Mr. Frazier says is that the gray 11:40:20</p> <p>11 markets can also -- sorry -- the benefits to a 11:40:25</p> <p>12 manufacturer as a result of gray marketing can also 11:40:29</p> <p>13 be long-term in nature. 11:40:35</p> <p>14 Q. Right. 11:40:35</p> <p>15 A. I would agree that they can, with a 11:40:37</p> <p>16 stress on can, also be long-term in nature. 11:40:39</p> <p>17 Q. Okay. And one of the ways could be 11:40:42</p> <p>18 increased sales volumes to price sensitive customers 11:40:44</p> <p>19 who would not otherwise be reached. Do you agree 11:40:49</p> <p>20 with that? 11:40:51</p> <p>21 A. Yes. 11:40:52</p> <p>22 Q. And validation that a brand or product 11:40:52</p> <p>23 is desirable. Do you agree with that? 11:40:56</p> <p>24 A. No. 11:40:58</p>	<p>1 purchasing population. 11:42:09</p> <p>2 Q. Okay. I know we are going to explore 11:42:10</p> <p>3 that. 11:42:14</p> <p>4 You state in Paragraph 13, I 11:42:14</p> <p>5 believe, of your initial report that the benefits of 11:42:16</p> <p>6 gray marketing are only short-term. Is your view 11:42:23</p> <p>7 now that they can be long-term as well? 11:42:29</p> <p>8 A. I -- 11:42:32</p> <p>9 MR. COLLINS: I want to find this 11:42:32</p> <p>10 paragraph. 11:42:34</p> <p>11 THE WITNESS: Yeah. Page 5. 11:42:34</p> <p>12 MR. COLLINS: Okay. I'm sorry. Can 11:42:34</p> <p>13 we have the question again? Forgive me. 11:42:43</p> <p>14 BY MR. BESSETTE: 11:42:43</p> <p>15 Q. Yeah. You state here that as this 11:42:43</p> <p>16 report will discuss, in other words, the benefits to 11:42:45</p> <p>17 a trademark owner from gray markets are generally 11:42:49</p> <p>18 short-term, and in the long-term, the gray market is 11:42:54</p> <p>19 often detrimental. Is that your view today? 11:42:57</p> <p>20 A. That's what I stated there and that's 11:43:00</p> <p>21 still my view. 11:43:02</p> <p>22 Q. Okay. You are not saying there that 11:43:03</p> <p>23 there are no long-term benefits to manufacturers 11:43:05</p> <p>24 from gray marketing, are you? 11:43:09</p>

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<p>1 A. I did not say there that there can be 11:43:09</p> <p>2 no long-term benefits. 11:43:11</p> <p>3 Q. And you don't hold that view? 11:43:12</p> <p>4 A. Correct. 11:43:14</p> <p>5 Q. Can you site me a specific example of 11:43:14</p> <p>6 gray market activity doing long-term damage to a 11:43:22</p> <p>7 company? 11:43:26</p> <p>8 A. Sure. 11:43:26</p> <p>9 Q. Okay. 11:43:27</p> <p>10 A. I can site Adams Golf. 11:43:28</p> <p>11 Q. Well, besides Adams Golf, because we 11:43:30</p> <p>12 disagree on that. 11:43:33</p> <p>13 A. Right. Yes, I can. I am thinking 11:43:34</p> <p>14 about one of the documents that I cited in my report 11:43:36</p> <p>15 in which trademark -- a group of manufacturers or 11:43:39</p> <p>16 trademark holders were asked about their opinion 11:43:45</p> <p>17 about the gray market and responded unanimously that 11:43:48</p> <p>18 they believed the gray market can have long-term 11:43:54</p> <p>19 detrimental effects. 11:43:58</p> <p>20 In addition, there is a statement 11:44:01</p> <p>21 from Adams Golf's own director of public relations 11:44:02</p> <p>22 that says that in the short-term the gray market can 11:44:06</p> <p>23 be beneficial, but in the long-term the gray market 11:44:09</p> <p>24 can have detrimental effects. 11:44:12</p>	<p>1 the publication date. 11:45:20</p> <p>2 Q. All right. We will get there as well. 11:45:21</p> <p>3 MR. COLLINS: Just so it is clear, it 11:45:24</p> <p>4 is the Eagle article? 11:45:25</p> <p>5 THE WITNESS: It is the Eagle article. 11:45:27</p> <p>6 MR. COLLINS: Which is listed in your 11:45:28</p> <p>7 report? 11:45:30</p> <p>8 THE WITNESS: Correct. 11:45:31</p> <p>9 MR. COLLINS: Okay. 11:45:31</p> <p>10 BY MR. BESSETTE: 11:45:31</p> <p>11 Q. And so what happened with the 11:45:32</p> <p>12 long-term damage that you remember from the Eagle 11:45:33</p> <p>13 article with respect to those companies was brand 11:45:36</p> <p>14 image, that's the long-term damage? 11:45:39</p> <p>15 A. In that article, yes. 11:45:41</p> <p>16 Q. Is there any other long-term damage 11:45:42</p> <p>17 that you are aware of from your reading of various 11:45:45</p> <p>18 articles that you consider a result of gray 11:45:48</p> <p>19 marketing over the long-term? 11:45:50</p> <p>20 A. Yes. And I cited them in my report. 11:45:51</p> <p>21 Q. What are they? 11:45:54</p> <p>22 A. Are you asking me about the articles 11:45:55</p> <p>23 or are you asking me about the damage? 11:45:56</p> <p>24 Q. The damage. 11:45:57</p>
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<p>1 Q. My question was, can you cite a 11:44:15</p> <p>2 specific example other than Adams Golf of gray 11:44:17</p> <p>3 market activity doing long-term damage to a company? 11:44:23</p> <p>4 A. I think I did. 11:44:23</p> <p>5 Q. Tell me the company and the example. 11:44:24</p> <p>6 I must have missed it. 11:44:26</p> <p>7 A. Sorry. The article that I was talking 11:44:28</p> <p>8 about doesn't disclose the sources that it used, as 11:44:30</p> <p>9 is typical in empirical research. 11:44:34</p> <p>10 Q. I am sorry. Then explain to me what 11:44:38</p> <p>11 was the long-term damage to the company that you 11:44:40</p> <p>12 remember in that article? 11:44:42</p> <p>13 A. It was a group of 15 companies, all of 11:44:43</p> <p>14 them had the same reaction, which was that the gray 11:44:45</p> <p>15 market can have negative effects on brand image and 11:44:50</p> <p>16 that brand image can detrimentally affect the 11:44:55</p> <p>17 company. That article goes on to state that in many 11:45:00</p> <p>18 cases, manufacturers or trademark holders will 11:45:03</p> <p>19 experience a decline in sales of up to 30 percent. 11:45:07</p> <p>20 Q. What article was that? 11:45:10</p> <p>21 A. That was the Eagle article. 11:45:11</p> <p>22 Q. The one published in 2003? 11:45:12</p> <p>23 A. Uh-huh. Actually, I should look to 11:45:14</p> <p>24 see the publication date. I don't remember exactly 11:45:17</p>	<p>1 A. Yes. My report states in more than 11:45:57</p> <p>2 one place that in the long-term, the gray market can 11:46:03</p> <p>3 have effects on pricing policies, it can have 11:46:08</p> <p>4 effects on distributor relationships, it can have 11:46:11</p> <p>5 effects on sales force morale, as well as the 11:46:14</p> <p>6 decreased prestige associated with the trademark. 11:46:17</p> <p>7 Q. Are you familiar with the article from 11:46:21</p> <p>8 Mike Mullen and C.M. Sashi and Patricia Doney called 11:46:58</p> <p>9 "Gray Markets: Threat or Opportunity?" published 11:47:03</p> <p>10 in 2003? It's the case of Herman Miller versus ASAL 11:47:07</p> <p>11 GmbH providing traditions and research on 11:47:07</p> <p>12 international market entry? 11:47:15</p> <p>13 A. I have some familiarity with that 11:47:15</p> <p>14 article. 11:47:17</p> <p>15 Q. I don't see it listed in yours. Did 11:47:17</p> <p>16 you review it in connection with your work in this 11:47:22</p> <p>17 case? 11:47:25</p> <p>18 A. I did not cite it, no. 11:47:25</p> <p>19 Q. Did you review it, nonetheless, in 11:47:27</p> <p>20 your work in this case? 11:47:30</p> <p>21 A. No. Let me back up. I did not review 11:47:31</p> <p>22 it in preparing my report. 11:47:32</p> <p>23 Q. Okay. In what context, if at all, did 11:47:33</p> <p>24 you review it? 11:47:39</p>

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1 A. It was submitted together with -- or I 11:47:40  
 2 received it together with the rebuttal report from 11:47:43  
 3 Frazier. 11:47:43  
 4 Q. Did you review the articles and 11:47:58  
 5 citations to the various articles that Professor 11:47:59  
 6 Frazier put in his report? 11:48:03  
 7 A. Yes. 11:48:04  
 8 MR. COLLINS: You mean apart from 11:48:04  
 9 Coughlan, which you asked about before? 11:48:07  
 10 MR. BESSETTE: Right. 11:48:09  
 11 BY THE WITNESS: 11:48:09  
 12 A. I am sorry, I interpreted your 11:48:10  
 13 question to mean, did I review the citations that he 11:48:13  
 14 made and look at the articles. 11:48:15  
 15 BY MR. BESSETTE: 11:48:17  
 16 Q. Right. That's what I wanted to know. 11:48:17  
 17 A. That I did. 11:48:19  
 18 Q. You did do that. 11:48:19  
 19 A. Obviously I couldn't read materials 11:48:21  
 20 that I didn't have. 11:48:23  
 21 Q. Right. My question is when you got 11:48:26  
 22 his report and he cited articles that you had up to 11:48:28  
 23 that point not read or reviewed, did you look at 11:48:31  
 24 them? 11:48:34

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1 A. If they were produced, yes. 11:48:34  
 2 Q. Now, in Paragraphs 18 to 26 of 11:48:35  
 3 Professor Frazier's report, starting on page 7 and 11:48:50  
 4 running to page 9, that's a section he entitles 11:48:54  
 5 "Gray Market Activities can be Effectively Managed." 11:49:01  
 6 And in there, he notes that many manufacturers in 11:49:04  
 7 many industries do just that, effectively manage 11:49:07  
 8 gray markets. Do you agree with that concept, that 11:49:11  
 9 gray markets -- manufacturers can manage effectively 11:49:14  
 10 gray marketing? 11:49:18  
 11 A. Yes. 11:49:19  
 12 Q. I think you write in Paragraph 18 of 11:49:20  
 13 your report, in Exhibit 303, I think it is the 11:49:36  
 14 fourth sentence. "To my knowledge, there is no 11:49:52  
 15 significant evidence that any approach will ensure 11:49:55  
 16 eradication of a company's gray market problem." 11:49:58  
 17 You believe that, right? 11:50:02  
 18 A. Yeah. Yes. 11:50:03  
 19 Q. And then in Paragraph 29B -- I am 11:50:06  
 20 sorry -- of your initial report, which is on page 11:50:16  
 21 20, last sentence. "When Adams did respond," and we 11:50:21  
 22 are talking about the gray market, "they appeared 11:50:33  
 23 not to have responded effectively." 11:50:35  
 24 A. Oh, 29B sorry. 11:50:35

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1 Q. Yeah, I'm sorry. 29B on page 20. 11:50:44  
 2 A. Yes. 11:50:46  
 3 Q. Okay. How do you know whether a 11:50:46  
 4 response was ineffective if gray markets can never 11:50:50  
 5 be eradicated? 11:50:54  
 6 A. Well, I think you are trying to say 11:50:56  
 7 that I have said that gray markets can never be 11:51:00  
 8 eradicated, which is not what I said. 11:51:04  
 9 Q. Okay. Paragraph 18, "To my knowledge, 11:51:07  
 10 there is no significant evidence that any approach 11:51:10  
 11 will ensure eradication of a company's gray market 11:51:12  
 12 problem." Are you saying that gray markets cannot 11:51:15  
 13 be eradicated? 11:51:21  
 14 A. No. 11:51:22  
 15 Q. Okay. What are you saying? 11:51:22  
 16 A. I am saying that when a company adopts 11:51:24  
 17 an approach, they cannot ensure that their gray 11:51:26  
 18 market problem will be eradicated by use of that 11:51:30  
 19 approach. 11:51:34  
 20 Q. So is there an approach -- 11:51:34  
 21 A. It's going forward looking at a 11:51:36  
 22 backward aspect to that. 11:51:38  
 23 Q. Can gray markets be eradicated? 11:51:40  
 24 A. Yes. 11:51:43

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1 Q. And they can be effectively managed as 11:51:43  
 2 well? 11:51:48  
 3 A. I actually want to back up. Can gray 11:51:48  
 4 markets be eradicated is a much bigger question than 11:51:51  
 5 can gray marketing at a particular company be 11:51:51  
 6 eradicated. 11:51:58  
 7 Q. And that's a good distinction. And 11:51:58  
 8 the latter is what I meant. 11:51:58  
 9 Can gray market activity at a 11:52:00  
 10 particular company be eradicated? 11:52:02  
 11 A. Yes. 11:52:04  
 12 Q. And as you testified, it can also be 11:52:05  
 13 managed? 11:52:08  
 14 A. Yes. 11:52:08  
 15 Q. All right. Now Paragraph 19 of your 11:52:08  
 16 rebuttal report, which is Exhibit 304, last 11:52:15  
 17 sentence. You write, "Without effective proactive 11:52:36  
 18 and reactive steps on the part of the trademark 11:52:39  
 19 holder, often the only cure for a gray market 11:52:43  
 20 problem is a general decline in demand for the 11:52:43  
 21 product being gray marketed." Does this imply that 11:52:50  
 22 with effective steps, a gray market at a particular 11:52:51  
 23 company can be cured? 11:52:56  
 24 A. Yeah. Though I don't think this would 11:52:57

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<p>1 be a cure that most manufacturers would hope for. 11:52:59</p> <p>2 It would be a cure that would essentially mean that 11:53:02</p> <p>3 their product is no longer in demand. 11:53:06</p> <p>4 Q. Now, what do you mean by "proactive 11:53:08</p> <p>5 and reactive steps" in that sentence? 11:53:20</p> <p>6 A. Gray market literature often refers to 11:53:23</p> <p>7 steps that manufacturers can take as proactive steps 11:53:25</p> <p>8 and reactive steps. Proactive steps would be steps 11:53:29</p> <p>9 like ensuring that they have business strategies in 11:53:34</p> <p>10 place that ward off gray marketers. 11:53:37</p> <p>11 They might also include strategies 11:53:44</p> <p>12 that Adams later adopted, like serializing golf 11:53:47</p> <p>13 clubs or serializing products. They might include 11:53:53</p> <p>14 ensuring that there is little to no price 11:53:55</p> <p>15 differentiation, so that the arbitrage that gray 11:53:58</p> <p>16 marketing depends on can't occur. They might ensure 11:54:00</p> <p>17 that they are counting for currency fluctuations, 11:54:06</p> <p>18 and ensuring that there is little space for 11:54:09</p> <p>19 arbitrage there, as well. Those would be typical 11:54:12</p> <p>20 proactive steps. 11:54:16</p> <p>21 Reactive steps would include 11:54:17</p> <p>22 making requests to the customs service to stop 11:54:19</p> <p>23 products from coming into the country. They might 11:54:26</p> <p>24 include issuing -- I am sorry -- litigating against 11:54:29</p>	<p>1 proactive or reactive steps. 11:55:23</p> <p>2 MR. COLLINS: Foundation, compound. 11:55:25</p> <p>3 Please answer. 11:55:28</p> <p>4 BY THE WITNESS: 11:55:28</p> <p>5 A. I don't feel comfortable answering the 11:55:29</p> <p>6 question the way that it was posed, because there is 11:55:30</p> <p>7 a timeline -- there is a timeline to the steps that 11:55:33</p> <p>8 Adams Golf decided to take in managing its gray 11:55:38</p> <p>9 market problem. So I am not entirely comfortable 11:55:43</p> <p>10 with answering the question the way it was asked. 11:55:47</p> <p>11 BY MR. BESSETTE: 11:55:49</p> <p>12 Q. I don't understand why. 11:55:49</p> <p>13 A. I can explain that. You are asking me 11:55:50</p> <p>14 to say whether Adams Golf -- whether the steps they 11:55:54</p> <p>15 took were proactive or reactive. And although some 11:55:58</p> <p>16 of the steps that Adams Golf may have taken may be 11:56:05</p> <p>17 steps that are characterized often in the literature 11:56:10</p> <p>18 as proactive steps, all of them were taken in 11:56:13</p> <p>19 reaction to gray marketing. I didn't see any 11:56:17</p> <p>20 evidence that Adams Golf did take any proactive 11:56:20</p> <p>21 steps in the sense of steps taken before its gray 11:56:24</p> <p>22 marketing problem commenced. 11:56:28</p> <p>23 Q. Okay. So if a company takes steps to 11:56:29</p> <p>24 manage gray marketing after gray marketing has 11:56:34</p>
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<p>1 the gray marketer or the company that is selling 11:54:32</p> <p>2 goods through the gray market, or trying, though 11:54:35</p> <p>3 there are not very many avenues for that at this 11:54:39</p> <p>4 point. Those would be some reactive steps. They 11:54:44</p> <p>5 might also -- well, those would be some reactive 11:54:47</p> <p>6 steps. There are more. 11:54:49</p> <p>7 Q. What strategies did Adams use to 11:54:49</p> <p>8 manage the gray market that it was experiencing? 11:54:53</p> <p>9 MR. COLLINS: Are you asking 11:54:55</p> <p>10 proactive, reactive or both? 11:54:57</p> <p>11 BY MR. BESSETTE: 11:54:59</p> <p>12 Q. I am going to ask you to tell me what 11:55:00</p> <p>13 the activities are and then classify them as 11:55:02</p> <p>14 proactive or reactive. 11:55:05</p> <p>15 MR. COLLINS: Foundation. 11:55:08</p> <p>16 Go ahead. 11:55:09</p> <p>17 BY THE WITNESS: 11:55:10</p> <p>18 A. I'm sorry, I think I'm going to ask 11:55:10</p> <p>19 you to restate the question, just because I'm not 11:55:10</p> <p>20 sure exactly what you are asking. 11:55:12</p> <p>21 BY MR. BESSETTE: 11:55:13</p> <p>22 Q. What I want to know is what steps did 11:55:13</p> <p>23 Adams Golf take to manage the gray market it was 11:55:15</p> <p>24 experiencing, and tell me if you think those were 11:55:20</p>	<p>1 already appeared, whatever steps it takes are 11:56:37</p> <p>2 reactive not proactive. Is that what I understand? 11:56:40</p> <p>3 A. Not necessarily. 11:56:44</p> <p>4 Q. Then what is the distinction? 11:56:45</p> <p>5 A. Those steps are taken in reaction to 11:56:46</p> <p>6 the gray marketing that has already occurred. Those 11:56:49</p> <p>7 steps might be proactive in the sense of trying to 11:56:53</p> <p>8 prevent future gray market activities from 11:56:56</p> <p>9 occurring. 11:56:59</p> <p>10 Q. So you are saying an activity that a 11:56:59</p> <p>11 company might employ could be both proactive and 11:57:04</p> <p>12 reactive? 11:57:07</p> <p>13 A. Yes. 11:57:08</p> <p>14 Q. And have you analyzed the steps Adams 11:57:08</p> <p>15 Golf in particular took to manage gray marketing and 11:57:16</p> <p>16 have you considered whether they were proactive or 11:57:19</p> <p>17 reactive or both? 11:57:22</p> <p>18 MR. COLLINS: Can you give us a time 11:57:23</p> <p>19 period or do you want a general -- 11:57:25</p> <p>20 BY MR. BESSETTE: 11:57:26</p> <p>21 Q. In the whole thing that you looked at. 11:57:26</p> <p>22 MR. COLLINS: Overbroad. 11:57:28</p> <p>23 BY THE WITNESS: 11:57:28</p> <p>24 A. Yes. 11:57:31</p>

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<p>1 BY MR. BESSETTE: 11:57:31</p> <p>2 Q. Okay. Well, then, back to my first 11:57:32</p> <p>3 question. Would you tell me the steps that you know 11:57:33</p> <p>4 Adams Golf took and whether you characterize them as 11:57:36</p> <p>5 proactive, reactive or maybe both? 11:57:41</p> <p>6 MR. COLLINS: Overbroad as there is no 11:57:42</p> <p>7 time period. 11:57:45</p> <p>8 Go ahead. 11:57:45</p> <p>9 BY THE WITNESS: 11:57:45</p> <p>10 A. Let me tell you the reason that I am 11:57:46</p> <p>11 hesitating in answering the question. It's because 11:57:48</p> <p>12 I think that there is sort of a step of omission 11:57:49</p> <p>13 that happened before the gray marketing started to 11:57:52</p> <p>14 occur, which was a step of designing a business 11:57:56</p> <p>15 strategy that was particularly attractive to gray 11:58:00</p> <p>16 marketers without putting in place any sort of 11:58:04</p> <p>17 prohibitors on gray market activity. 11:58:08</p> <p>18 Once the gray marketing began at 11:58:12</p> <p>19 Adams Golf, then the company did begin to react 11:58:16</p> <p>20 mostly through what would be characterized in the 11:58:22</p> <p>21 literature as proactive steps. 11:58:26</p> <p>22 BY MR. BESSETTE: 11:58:29</p> <p>23 Q. Are there demand side strategies and 11:58:29</p> <p>24 supply side strategies to deal with gray marketing? 11:58:40</p>	<p>1 review that -- were you familiar with that in part 11:59:54</p> <p>2 of your course work or just in connection with your 11:59:57</p> <p>3 work on this case? 11:59:59</p> <p>4 A. I had seen the article before. 12:00:00</p> <p>5 Q. You used it in your course work? 12:00:02</p> <p>6 A. I used it -- I am taking issue with 12:00:05</p> <p>7 the word "used." I read it before. 12:00:11</p> <p>8 Q. Okay. Now, I can get the article if 12:00:13</p> <p>9 you need it, but are you familiar that the author 12:00:34</p> <p>10 lists offering rebates as a proactive demand side 12:00:37</p> <p>11 strategy to deal with gray marketing? 12:00:42</p> <p>12 A. Yes. 12:00:45</p> <p>13 Q. Did Adams offer rebates to retailers 12:00:45</p> <p>14 to combat the gray marketing? 12:00:49</p> <p>15 A. They put in place a couple of 12:00:52</p> <p>16 programs, one of them was a fairly complicated 12:00:55</p> <p>17 program which might be categorized as a rebate. 12:00:59</p> <p>18 Q. So in your opinion, is this a reactive 12:01:02</p> <p>19 or proactive strategy? 12:01:05</p> <p>20 A. It was in reaction to gray marketing 12:01:07</p> <p>21 that was already occurring. It was a proactive 12:01:10</p> <p>22 strategy, if you put it into the classification that 12:01:13</p> <p>23 are typically found in the literature. 12:01:16</p> <p>24 Q. Well, what do you do? How do you 12:01:18</p>
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<p>1 A. Let me think about that for just one 11:58:44</p> <p>2 second, because that's not the way that I think 11:58:51</p> <p>3 about it. 11:58:52</p> <p>4 Yes. 11:58:53</p> <p>5 Q. Give me some examples of both, if you 11:58:53</p> <p>6 would. 11:58:56</p> <p>7 A. Okay. On the demand side, educated 11:58:56</p> <p>8 consumers about the gray market and about the 11:58:59</p> <p>9 potential hazards of buying goods through gray 11:59:01</p> <p>10 market channels would be an example of demand side 11:59:06</p> <p>11 steps to combat gray market activity. 11:59:12</p> <p>12 The supply side we have already 11:59:15</p> <p>13 talked about some of them, serializing products, 11:59:17</p> <p>14 ensuring that price differentiation is kept to a 11:59:20</p> <p>15 minimum, decreasing profit -- sort of keeping profit 11:59:24</p> <p>16 margins within reason would be another good example. 11:59:29</p> <p>17 There are more. 11:59:34</p> <p>18 Q. Are you familiar with the Berman 11:59:35</p> <p>19 article you list in your materials? 11:59:43</p> <p>20 A. Yes. 11:59:45</p> <p>21 Q. It is entitled "Strategies to Combat 11:59:46</p> <p>22 the Sale of Gray Market Goods"? 11:59:51</p> <p>23 A. Correct. 11:59:53</p> <p>24 Q. Okay. Now, let me ask you, did you 11:59:54</p>	<p>1 classify it? 12:01:19</p> <p>2 A. A reaction that is a proactive step to 12:01:20</p> <p>3 try to eliminate future gray marketing. 12:01:23</p> <p>4 Q. So it is a proactive strategy? 12:01:26</p> <p>5 A. Taking in reaction to existing gray 12:01:29</p> <p>6 marketing. 12:01:32</p> <p>7 MR. COLLINS: When you reach a point, 12:01:33</p> <p>8 I want to stop for a moment. 12:01:35</p> <p>9 MR. BESSETTE: Okay. 12:01:36</p> <p>10 BY MR. BESSETTE: 12:01:45</p> <p>11 Q. Did you conclude in your report that 12:01:45</p> <p>12 Adams Golf took no deliberate proactive steps to 12:01:48</p> <p>13 combat gray marketing? 12:01:53</p> <p>14 MR. COLLINS: Speaks for itself. 12:01:55</p> <p>15 BY THE WITNESS: 12:01:56</p> <p>16 A. Could you point to that paragraph? 12:01:57</p> <p>17 BY MR. BESSETTE: 12:02:00</p> <p>18 Q. I think it is Paragraph 29 of your 12:02:01</p> <p>19 rebuttal report. Let's just look. Yes. Third 12:02:03</p> <p>20 sentence, Paragraph 29 of the rebuttal report, which 12:02:19</p> <p>21 is Exhibit 304. "Despite the prevalence of gray 12:02:23</p> <p>22 market activity in certain sectors of the golf 12:02:27</p> <p>23 industry, the company appears to have taken no 12:02:3</p> <p>24 deliberate proactive steps to prevent a gray 12:02:31</p>

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<p>1 marketing problem from gaining a foothold at Adams." 12:02:39</p> <p>2 A. Yes. The company appears to have 12:02:39</p> <p>3 taken no proactive steps from preventing a gray 12:02:43</p> <p>4 market problem from arising at Adams. 12:02:48</p> <p>5 Q. Well, that's not what you say. You 12:02:51</p> <p>6 say from gaining a foothold. 12:02:51</p> <p>7 A. From gaining a foothold. They took no 12:02:53</p> <p>8 steps prior to the gray market problem arising at 12:02:55</p> <p>9 Adams. 12:02:57</p> <p>10 Q. Did Adams Golf take any proactive 12:02:57</p> <p>11 steps to manage the gray marketing that was 12:03:01</p> <p>12 appearing? 12:03:03</p> <p>13 MR. COLLINS: Asked and answered 12:03:03</p> <p>14 several times. 12:03:03</p> <p>15 BY THE WITNESS: 12:03:04</p> <p>16 A. After the gray marketing occurred, 12:03:04</p> <p>17 yes. 12:03:06</p> <p>18 BY MR. BESSETTE: 12:03:06</p> <p>19 Q. Now, the author in that same article 12:03:06</p> <p>20 lists labeling products as a proactive supply side 12:03:16</p> <p>21 strategy. Did Adams Golf do that to the best of 12:03:20</p> <p>22 your knowledge? 12:03:23</p> <p>23 A. After the gray market problem arose, 12:03:23</p> <p>24 yes. 12:03:26</p>	<p>1 happening, right? 12:04:25</p> <p>2 A. Gray marketing is already happening in 12:04:26</p> <p>3 the world, yes. It does not assume that gray 12:04:27</p> <p>4 marketing is happening at any one firm, no. 12:04:31</p> <p>5 Q. Have you ever seen in the academic 12:04:34</p> <p>6 literature a category that you are testifying to 12:04:37</p> <p>7 today which is proactive steps that are a reaction 12:04:41</p> <p>8 to gray marketing at that company? 12:04:44</p> <p>9 A. Yes. I think any literature that 12:04:46</p> <p>10 deals with steps the companies can take to stem gray 12:04:49</p> <p>11 market problems and to keep them at bay deals with 12:04:55</p> <p>12 both the potential of gray marketing arising for a 12:05:01</p> <p>13 particular company. It also deals with the 12:05:05</p> <p>14 possibility that gray marketing has already arisen 12:05:07</p> <p>15 at a company, and a company is now looking for a way 12:05:10</p> <p>16 to diminished that gray market activity over time. 12:05:13</p> <p>17 Q. Right. So proactive steps assume both 12:05:15</p> <p>18 gray marketing is happening in the world, and in 12:05:18</p> <p>19 that particular company, do they not? 12:05:20</p> <p>20 A. No. 12:05:22</p> <p>21 MR. COLLINS: Objection, vague. 12:05:22</p> <p>22 BY THE WITNESS: 12:05:23</p> <p>23 A. No. Not necessarily. You can imagine 12:05:24</p> <p>24 a situation in which a manufacturer who knows that 12:05:26</p>
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<p>1 Q. Is this an example of reactive or 12:03:26</p> <p>2 proactive strategy? 12:03:30</p> <p>3 A. Typically categorized in the 12:03:30</p> <p>4 literature as a proactive step. 12:03:31</p> <p>5 Q. And how do you characterize it? 12:03:31</p> <p>6 A. A reaction to a gray matter problem 12:03:33</p> <p>7 that had already arisen. It is a proactive step. 12:03:37</p> <p>8 Q. In the literature, do they -- have you 12:03:40</p> <p>9 ever read anything that characterizes the way you do 12:03:42</p> <p>10 a proactive step, whether it's before or after gray 12:03:46</p> <p>11 marketing has occurred? Is it any different? 12:03:49</p> <p>12 A. I couldn't tell you for sure whether I 12:03:50</p> <p>13 have seen it characterized that way. It is -- 12:03:52</p> <p>14 certainly the literature that is out there to try to 12:03:55</p> <p>15 inform manufacturers about how to prevent or stop 12:03:57</p> <p>16 gray market problems assumes that manufacturers are 12:04:00</p> <p>17 concerned about a gray market problem. 12:04:04</p> <p>18 Q. Well, proactive steps also assume that 12:04:06</p> <p>19 gray marketing is going on, do they not, in the 12:04:10</p> <p>20 literature? 12:04:14</p> <p>21 A. In the world, yes. 12:04:14</p> <p>22 Q. So when the academic literature you 12:04:15</p> <p>23 read talks about proactive steps to manage gray 12:04:18</p> <p>24 marketing, by definition gray marketing is already 12:04:21</p>	<p>1 they have a product and a business model that is 12:05:29</p> <p>2 particularly attractive to gray marketers, that they 12:05:32</p> <p>3 are likely to have a gray marketing problem given 12:05:36</p> <p>4 their business model and given the nature of their 12:05:39</p> <p>5 product. Being aware that gray marketing exists in 12:05:43</p> <p>6 the world and, therefore, taking proactive steps to 12:05:47</p> <p>7 ensure that gray marketing never occurs or trying to 12:05:50</p> <p>8 ensure that gray marketing never occurs within their 12:05:53</p> <p>9 company. 12:05:57</p> <p>10 BY MR. BESSETTE: 12:05:58</p> <p>11 Q. Was Adams Golf's offering of rebates a 12:05:58</p> <p>12 deliberate proactive step to manage its gray 12:06:03</p> <p>13 marketing problem? 12:06:07</p> <p>14 A. Can you ask the question again? I'm 12:06:08</p> <p>15 sorry. 12:06:08</p> <p>16 MR. BESSETTE: Can you read it back, 12:06:08</p> <p>17 please? 12:06:08</p> <p>18 (Record read.) 12:06:21</p> <p>19 BY THE WITNESS: 12:06:21</p> <p>20 A. It was -- 12:06:22</p> <p>21 MR. COLLINS: Excuse me. Asked and 12:06:22</p> <p>22 answered. 12:06:22</p> <p>23 Go ahead. 12:06:24</p> <p>24</p>

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<p>1 BY THE WITNESS: 12:06:24</p> <p>2 A. It was a step that was taken in 12:06:25</p> <p>3 reaction to the gray market having already arised at 12:06:26</p> <p>4 Adams Golf, and it was a proactive step. 12:06:32</p> <p>5 BY MR. BESSETTE: 12:06:35</p> <p>6 Q. And was Adams Golf's efforts to label 12:06:35</p> <p>7 its products with serial numbers a proactive supply 12:06:40</p> <p>8 side strategy to combat or deal with its existing 12:06:40</p> <p>9 gray marketing problem? 12:06:45</p> <p>10 A. Yes. 12:06:46</p> <p>11 MR. COLLINS: Paul, if you have 12:06:56</p> <p>12 reached a point to pause. 12:06:57</p> <p>13 MR. BESSETTE: Oh, this is fine. I 12:07:18</p> <p>14 forgot. That's fine. 12:07:18</p> <p>15 (Off the record 12:07:18</p> <p>16 discussion.) 12:07:18</p> <p>17 BY MR. BESSETTE: 12:07:18</p> <p>18 Q. Let's see. Professor Frazier's 12:07:20</p> <p>19 report, 305, Paragraph 11, first sentence. "Gray 12:07:24</p> <p>20 market activities are commonplace in a wide variety 12:07:42</p> <p>21 of industries from expensive consumer durables like 12:07:42</p> <p>22 cars to inexpensive household products like 12:07:50</p> <p>23 cosmetics." Do you agree with that statement? 12:07:53</p> <p>24 A. Yes. 12:07:55</p>	<p>1 when you said it was widely known that gray 12:11:28</p> <p>2 marketing was taking place in certain sectors of the 12:11:31</p> <p>3 industry? 12:11:35</p> <p>4 A. I meant that gray marketing was 12:11:35</p> <p>5 occurring in certain sectors of the industry. I'm 12:11:35</p> <p>6 not sure what's unclear. 12:11:37</p> <p>7 Q. How was it widely known? 12:11:37</p> <p>8 A. The world is -- well, let me back up. 12:11:39</p> <p>9 Consumers become aware of gray marketing through 12:11:44</p> <p>10 seeing golf clubs available through gray market 12:11:47</p> <p>11 chains, big box retailers, etcetera. And also in 12:11:54</p> <p>12 the golf industry, my understanding is that word 12:11:58</p> <p>13 spreads quickly and that would be another way. 12:12:02</p> <p>14 Q. So your understanding, what is that 12:12:04</p> <p>15 based on? 12:12:08</p> <p>16 A. What I have read about the golf 12:12:09</p> <p>17 industry in connection with this litigation. 12:12:11</p> <p>18 Q. Okay. Any other knowledge about the 12:12:13</p> <p>19 golf industry other than what you have read in this 12:12:15</p> <p>20 litigation? 12:12:18</p> <p>21 A. Do I know anything else about the golf 12:12:20</p> <p>22 industry other than what I have read in connection 12:12:23</p> <p>23 with this litigation? Is that the question? 12:12:24</p> <p>24 Q. Well, I will ask her to repeat my 12:12:26</p>
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<p>1 Q. In Paragraph 5A of your rebuttal 12:07:56</p> <p>2 report, and I think you do it a couple of other 12:09:53</p> <p>3 places too, but that's the one I have. I guess it 12:09:56</p> <p>4 is the last sentence. You say, "In addition," and 12:10:19</p> <p>5 then A. And what you are talking about there is 12:10:23</p> <p>6 gray marketing. Saying that gray marketing -- it 12:10:26</p> <p>7 was widely known that gray marketing was taking 12:10:29</p> <p>8 place in certain sectors of the golf industry. What 12:10:31</p> <p>9 did you mean by that? 12:10:34</p> <p>10 MR. COLLINS: Read to yourself the 12:10:36</p> <p>11 whole subparagraph, or if you feel necessary, the 12:10:38</p> <p>12 whole paragraph, please. 12:10:40</p> <p>13 BY THE WITNESS: 12:10:42</p> <p>14 A. Okay. As you know, I teach a section 12:10:59</p> <p>15 on gray marketing and use the golf industry as an 12:11:01</p> <p>16 example. Specifically, I use Callaway as an example 12:11:05</p> <p>17 of gray marketing, in addition to others. It is 12:11:08</p> <p>18 certainly not the case that gray marketing was a 12:11:14</p> <p>19 uniform problem in the golf industry. It affected 12:11:17</p> <p>20 different companies differently. 12:11:21</p> <p>21 BY MR. BESSETTE: 12:11:22</p> <p>22 Q. That's what you meant? 12:11:22</p> <p>23 A. Yes. 12:11:25</p> <p>24 Q. What I want to know is what you meant 12:11:26</p>	<p>1 question. 12:12:26</p> <p>2 (Record read.) 12:12:26</p> <p>3 BY THE WITNESS: 12:12:26</p> <p>4 A. I guess I just don't understand. Do I 12:12:36</p> <p>5 have any other knowledge about the golf industry? 12:12:39</p> <p>6 BY MR. BESSETTE: 12:12:42</p> <p>7 Q. Let me ask you this: What was your 12:12:42</p> <p>8 level of knowledge about the golf industry prior to 12:12:43</p> <p>9 you teaching a class that had gray marketing in a 12:12:46</p> <p>10 subset, you know, gray marketing as it related to 12:12:49</p> <p>11 the golf industry? What was your knowledge? 12:12:51</p> <p>12 A. No more than a layperson. 12:12:54</p> <p>13 Q. And now it is more because of the 12:12:56</p> <p>14 litigation that we are in and the materials that you 12:12:59</p> <p>15 have read about it? 12:13:02</p> <p>16 A. Yes. 12:13:04</p> <p>17 Q. Paragraph 1 of your rebuttal report, 12:13:05</p> <p>18 1A actually, you say that you have been asked by 12:14:05</p> <p>19 plaintiff's counsel to provide your opinions 12:14:14</p> <p>20 regarding the expert reports of Stephen Grace and 12:14:15</p> <p>21 Chris James to the extent such reports purport to 12:14:19</p> <p>22 present the characteristics of gray marketing and 12:14:23</p> <p>23 the effects the gray market can have on brand name 12:14:26</p> <p>24 products on the trademark owners or manufacturers 12:14:29</p>

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<p>1 thereof. Do you differentiate a brand name from a 12:14:32</p> <p>2 hot product? 12:14:37</p> <p>3 A. Yes. 12:14:39</p> <p>4 Q. Was the Tight Lies a hot product or a 12:14:39</p> <p>5 brand name? 12:14:52</p> <p>6 A. It was both. 12:14:53</p> <p>7 Q. And what is your basis for saying 12:14:55</p> <p>8 that? 12:14:59</p> <p>9 A. It was a brand name that was popular 12:14:59</p> <p>10 at the time it was a hot product. 12:15:02</p> <p>11 Q. I am sorry? 12:15:04</p> <p>12 A. So a hot product would be a modifier. 12:15:06</p> <p>13 It would be a way of describing the brand name. The 12:15:10</p> <p>14 brand name was popular. It was in demand. It was a 12:15:14</p> <p>15 hot product. 12:15:17</p> <p>16 Q. Do any of the articles that you have 12:15:17</p> <p>17 reviewed that you listed in your report speak to the 12:15:20</p> <p>18 difference between a brand name -- well, hold on. 12:15:25</p> <p>19 Strike that. Yeah. 12:15:39</p> <p>20 Do any of the articles that you 12:15:40</p> <p>21 have read speak to the difference between 12:15:42</p> <p>22 characteristics involved with a brand name versus 12:15:45</p> <p>23 characteristics involved with a hot product as they 12:15:51</p> <p>24 relate to gray market? 12:15:54</p>	<p>1 the world and those that have the fortune, the good 12:17:03</p> <p>2 fortune of becoming hot products. 12:17:08</p> <p>3 BY MR. BESSETTE: 12:17:12</p> <p>4 Q. And what are some of the differences 12:17:12</p> <p>5 as it relates to gray marketing? 12:17:14</p> <p>6 A. Gray marketing, as we have already 12:17:16</p> <p>7 discussed, can occur in a wide variety of sectors. 12:17:19</p> <p>8 And it is not the case necessarily that gray 12:17:23</p> <p>9 marketing only occurs in the case of products that 12:17:26</p> <p>10 have become hot products, but certainly a brand name 12:17:30</p> <p>11 as having sort of risen to the level of being a hot 12:17:35</p> <p>12 product, becoming a popular product, one that 12:17:39</p> <p>13 consumers widely desire, makes it more attractive to 12:17:42</p> <p>14 the gray market. 12:17:46</p> <p>15 Q. Okay. And Paragraph 5B of your 12:17:47</p> <p>16 rebuttal, the next page, next to last sentence. You 12:18:15</p> <p>17 say, "Prior to the initial public offering, there 12:18:26</p> <p>18 were indications that gray market sales of Adams 12:18:29</p> <p>19 Golf clubs were increasing and that the gray market 12:18:33</p> <p>20 could have a deleterious effect on sales for Adams." 12:18:36</p> <p>21 First off, did you review any data that indicates 12:18:40</p> <p>22 that? 12:18:43</p> <p>23 A. Yes. 12:18:43</p> <p>24 Q. What was that? 12:18:44</p>
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<p>1 MR. COLLINS: I don't think you meant 12:16:01</p> <p>2 to, but vague and ambiguous. 12:16:03</p> <p>3 So answer if you can understand 12:16:06</p> <p>4 the question. 12:16:09</p> <p>5 BY THE WITNESS: 12:16:11</p> <p>6 A. Yeah. Actually if you could just 12:16:16</p> <p>7 rephrase, that would be helpful. 12:16:18</p> <p>8 MR. COLLINS: I can tell you what I 12:16:24</p> <p>9 think the problem is, if that would be helpful. 12:16:25</p> <p>10 MR. BESSETTE: No, that's okay. But I 12:16:28</p> <p>11 appreciate it. 12:16:30</p> <p>12 BY MR. BESSETTE: 12:16:31</p> <p>13 Q. Let me just ask generally. Do you 12:16:33</p> <p>14 recall any distributions or differences in any of 12:16:36</p> <p>15 the academic articles you cite in your report about 12:16:39</p> <p>16 gray marketing as it relates to a brand name product 12:16:43</p> <p>17 and/or a hot product? 12:16:47</p> <p>18 MR. COLLINS: Foundation. 12:16:48</p> <p>19 BY THE WITNESS: 12:16:49</p> <p>20 A. Honestly, I am not remembering whether 12:16:49</p> <p>21 it is in the materials that I submitted in 12:16:51</p> <p>22 connection with this litigation or other materials 12:16:53</p> <p>23 that I have read previously, but, yes, there is a 12:16:55</p> <p>24 distinction between the brand names that exist in 12:16:59</p>	<p>1 A. The Costco -- the Costco figures that 12:18:45</p> <p>2 were -- that have been produced in connection with 12:18:49</p> <p>3 this litigation. 12:18:53</p> <p>4 Q. So the Costco sales data that they 12:18:54</p> <p>5 produced? 12:18:59</p> <p>6 A. Okay. As to -- you are asking about 12:18:59</p> <p>7 figures, and it is a little bit -- well, let me just 12:19:02</p> <p>8 tell you the world of things that I saw -- the world 12:19:08</p> <p>9 of things that would be classified as figures. 12:19:10</p> <p>10 Q. First off, I didn't ask about figures. 12:19:12</p> <p>11 What I wanted to know was, your statement here that 12:19:14</p> <p>12 the gray market sales were increasing and the gray 12:19:17</p> <p>13 market could have a deleterious effect on sales for 12:19:21</p> <p>14 Adams, what is that based on? 12:19:25</p> <p>15 MR. COLLINS: And forgive me, that is 12:19:27</p> <p>16 compound. It sounds like figures to me in the first 12:19:28</p> <p>17 half of that question. That's the question. 12:19:30</p> <p>18 Answer it, subject to my 12:19:32</p> <p>19 objection. 12:19:33</p> <p>20 BY THE WITNESS: 12:19:34</p> <p>21 A. Okay. As to the first part of that 12:19:34</p> <p>22 sentence, there were indications that gray market 12:19:36</p> <p>23 sales of Adams Golf clubs were increasing. That 12:19:39</p> <p>24 information came from a few sources, one was the 12:19:42</p>

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